

MONTANA LEGISLATIVE HISTORY

BEST COPY
AVAILABLE

Chapter 562 19 95

Bill H _____ S 333 Original bill & history C

H. Committee on Judiciary

Hearing Date(s) Mar 14 ☒ C

Mar 22 ☒ C

_____ ☐ C

_____ ☐ C

Date Out Mar 23 ☒ C

S. Committee on Judiciary

Hearing Date(s) Feb 15 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Feb 15 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

Conference Committee

Apr 11

3/13	HEARING		
3/22	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/25	2ND READING CONCURRED AS AMENDED	67	33
3/28	3RD READING CONCURRED	63	35
	RETURNED TO SENATE WITH AMENDMENTS		
3/31	REVISED FISCAL NOTE RECEIVED		
3/31	REVISED FISCAL NOTE PRINTED		
4/03	2ND READING AMENDMENTS CONCURRED	34	11
4/04	3RD READING AMENDMENTS CONCURRED	37	12
4/08	SIGNED BY PRESIDENT		
4/08	SIGNED BY SPEAKER		
4/10	TRANSMITTED TO GOVERNOR		
4/15	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 497		
	EFFECTIVE DATE: 04/15/95		

SB 332 INTRODUCED BY WELDON, ET AL.

REVISE CONDITIONS FOR SALE OF A MOBILE HOME IN A MOBILE HOME PARK

2/08	INTRODUCED		
2/08	FIRST READING		
2/08	REFERRED TO BUSINESS & INDUSTRY		
2/15	HEARING		
2/16	TABLED IN COMMITTEE		
2/17	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/18	2ND READING DO PASS MOTION FAILED	20	28
2/18	2ND READING INDEFINITELY POSTPONED	33	16

SB 333 INTRODUCED BY BISHOP

REQUIRE THAT A FIRST-TIME OFFENDER OF DRIVING UNDER THE INFLUENCE OR WITH EXCESSIVE ALCOHOL CONCENTRATION WHO IS DIAGNOSED AS CHEMICALLY DEPENDENT RECEIVE TREATMENT

2/08	INTRODUCED		
2/08	FIRST READING		
2/08	REFERRED TO JUDICIARY		
2/09	FISCAL NOTE REQUESTED		
2/15	HEARING		
2/15	FISCAL NOTE RECEIVED		
2/15	FISCAL NOTE PRINTED		
2/15	COMMITTEE REPORT—BILL PASSED		
2/17	2ND READING PASSED AS AMENDED	50	0
2/18	3RD READING PASSED	46	4
	TRANSMITTED TO HOUSE		
2/20	FIRST READING		
2/20	REFERRED TO JUDICIARY		
3/14	HEARING		
3/23	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/25	2ND READING CONCURRED	83	15
3/27	3RD READING CONCURRED	82	16
	RETURNED TO SENATE WITH AMENDMENTS		
4/01	MOTION FAILED TO CONCUR WITH AMENDMENTS ON 2ND READING	15	29
4/01	2ND READING AMENDMENTS NOT CONCURRED	37	8
4/03	RECONSIDERED PREVIOUS ACTION AND PLACED BACK ON 2ND READING		
4/04	MOTION FAILED TO CONCUR WITH AMENDMENTS ON 2ND READING	24	25
4/04	2ND READING AMENDMENTS NOT CONCURRED	29	20

4/05	CONFERENCE COMMITTEE APPOINTED		
4/11	CONFERENCE COMMITTEE REPORT NO. 1		
4/12	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	48	0
4/13	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	50	0
	HOUSE		
4/05	CONFERENCE COMMITTEE APPOINTED		
4/11	CONFERENCE COMMITTEE REPORT NO. 1		
4/12	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	97	1
4/13	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	91	8
4/18	SIGNED BY PRESIDENT		
4/18	SIGNED BY SPEAKER		
4/18	TRANSMITTED TO GOVERNOR		
4/26	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 567		
	EFFECTIVE DATE: 10/01/95		

SB 334 INTRODUCED BY BAER, ET AL.

SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO
ARTICLE VIII, SECTIONS 3 AND 4, OF THE MONTANA CONSTITUTION TO
LIMIT THE ASSESSED VALUE FOR TAX PURPOSES OF
OWNER-OCCUPIED RESIDENCES

2/08	INTRODUCED		
2/08	FIRST READING		
2/08	REFERRED TO TAXATION		
3/02	FISCAL NOTE REQUESTED		
3/07	FISCAL NOTE RECEIVED		
3/07	FISCAL NOTE PRINTED		
3/08	HEARING		
3/21	TABLED IN COMMITTEE		
3/22	MOTION FAILED TO TAKE FROM COMMITTEE AND PLACE ON 2ND READING	21	28
3/23	MOTION FAILED TO TAKE FROM COMMITTEE AND PLACE ON 2ND READING	24	25
3/23	MOTION CARRIED TO LAY PREVIOUS MOTION UPON THE TABLE	33	17
	DIED IN COMMITTEE		

SB 335 INTRODUCED BY MILLER, ET AL.

REVISE THE MONTANA RETAIL INSTALLMENT SALES ACT

2/08	INTRODUCED		
2/08	FIRST READING		
2/08	REFERRED TO BUSINESS & INDUSTRY		
2/16	HEARING		
2/16	COMMITTEE REPORT—BILL PASSED		
2/17	2ND READING PASSED	50	0
2/18	3RD READING PASSED	48	2
	TRANSMITTED TO HOUSE		
2/20	FIRST READING		
2/20	REFERRED TO BUSINESS & LABOR		
3/08	HEARING		
3/08	COMMITTEE REPORT—BILL CONCURRED		
3/11	REREFERRED TO BUSINESS & LABOR		
3/16	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/25	2ND READING DO NOT CONCUR AS AMENDED MOTION FAILED	38	57

SENATE BILL NO. 333

INTRODUCED BY

Bishop

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE ISSUANCE OF A RESTRICTED PROBATIONARY DRIVER'S LICENSE TO A PERSON CONVICTED OF DRIVING UNDER THE INFLUENCE UNTIL THE PERSON HAS COMPLETED THE ALCOHOL INFORMATION COURSE, TREATMENT PROGRAM, OR BOTH; REQUIRING THAT A FIRST-TIME OFFENDER OF DRIVING UNDER THE INFLUENCE WHO IS DIAGNOSED AS CHEMICALLY DEPENDENT RECEIVE TREATMENT; REQUIRING THAT A PERSON CONVICTED OF DRIVING UNDER THE INFLUENCE RECEIVE TREATMENT BASED UPON THE FINDINGS OF A CERTIFIED CHEMICAL DEPENDENCY COUNSELOR PURSUANT TO DIAGNOSIS AND PATIENT PLACEMENT RULES ADOPTED BY THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES; AND AMENDING SECTIONS 61-5-208, 61-8-714, AND 61-11-101, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-5-208, MCA, is amended to read:

"61-5-208. Period of suspension or revocation. (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1 year, except as otherwise permitted by law.

(2) A person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored unless the revocation was for a cause ~~which~~ that has been removed. After the expiration of the period of the revocation or suspension, the person may ~~make application~~ apply for a new license or endorsement as provided by law but the department may not issue a new license or endorsement ~~unless and~~ until it is satisfied, after investigation of the driving ability of the person and upon a showing by its records or other sufficient evidence, that the person is eligible to be licensed to drive in Montana. When ~~any~~ a person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or ~~any~~ a drug or a combination of alcohol ~~or and~~ and drugs or for the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or collateral

1 not vacated, suspend the driver's license or driving privilege of the person for a period of 6 months. That
2 person may not be issued a restricted probationary driver's license by the department under 61-2-302 until
3 the person has completed the alcohol information course or treatment program, or both, as ordered by the
4 sentencing court under 61-8-714 or 61-8-722. Upon receiving a report of a conviction or forfeiture of bail
5 or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department
6 shall revoke the license or driving privilege of the person for a period of 1 year, except that if the 1-year
7 period passes and the person has not completed an alcohol information course, treatment, or both, as
8 ordered by the sentencing court, the license revocation remains in effect until the course, treatment, or both
9 are completed.

10 (3) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in
11 subsection (2).

12 (4) The period of revocation for ~~any~~ a person convicted of any offense which makes mandatory
13 the revocation of the driver's license commences from date of conviction or forfeiture of bail.

14 (5) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial
15 motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-811 and
16 subsection (2) of this section."
17

18 **Section 2.** Section 61-8-714, MCA, is amended to read:

19 **"61-8-714. Penalty for driving under influence of alcohol or drugs.** (1) Except as provided in
20 subsections (7) and (8), a person convicted of a violation of 61-8-401 shall be punished by imprisonment
21 in the county jail for not less than 24 consecutive hours or more than 60 days and shall be punished by a
22 fine of not less than \$100 or more than \$500. The imprisonment sentence may not be suspended unless
23 the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical
24 or mental well-being.

25 (2) Except as provided in subsection (7), on a second conviction, the person shall be punished by
26 a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days, at least 48
27 hours of which must be served consecutively, or more than 6 months. Except as provided in subsection
28 (7), 3 days of the imprisonment sentence may not be suspended unless the judge finds that the imposition
29 of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

30 (3) (a) Except as provided in subsection (7), on the third or subsequent conviction, the person shall

1 be punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be
2 served consecutively, or more than 1 year and by a fine of not less than \$500 or more than \$1,000. Except
3 as provided in subsection (7), notwithstanding any provision to the contrary providing for suspension of
4 execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of
5 the imprisonment sentence imposed for a third or subsequent offense that occurred within 5 years of the
6 first offense may not be deferred or suspended.

7 (b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed
8 by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be
9 seized and subjected to the procedure provided under 61-8-421.

10 (ii) A vehicle used by a person as a common carrier in the transaction of business as a common
11 carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle
12 consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or
13 omission established by the owner to have been committed or omitted by a person other than the owner
14 while the vehicle was unlawfully in the possession of a person other than the owner in violation of the
15 criminal laws of this state or the United States.

16 (iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's
17 interest if the person did not know and could not have reasonably known of the unlawful possession, use,
18 or other act on which the forfeiture is sought.

19 (4) In addition to the punishment provided in this section, regardless of disposition, the defendant
20 shall complete an alcohol information course at an alcohol treatment program approved by the department
21 of corrections and human services, which may, ~~in the sentencing court's discretion and upon~~
22 ~~recommendation of a certified chemical dependency counselor,~~ include alcohol or drug treatment, or both.
23 Alcohol or drug treatment, or both, must be ordered for a first-time offender upon a finding of chemical
24 dependency made by a certified chemical dependency counselor pursuant to diagnosis and patient
25 placement rules adopted by the department of corrections and human services. On conviction of a second
26 or subsequent offense under this section, in addition to the punishment provided in this section, regardless
27 of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program
28 approved by the department of corrections and human services, which must include alcohol or drug
29 treatment, or both. ~~Each counselor providing education or treatment shall, at the commencement of the~~
30 ~~education or treatment, notify the court that the defendant has been enrolled in a course or treatment~~

~~program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.~~ As long as the alcohol information course is approved as provided in this subsection and the treatment is provided by a certified chemical dependency counselor, the defendant may attend the information course and treatment program of the defendant's choice. The treatment provided to the defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as determined by ~~the judge based upon the recommendation from the~~ a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of corrections and human services. Upon determination, the court shall order the defendant's appropriate level of treatment. If more than one counselor makes a determination as provided in this subsection, the court shall order an appropriate level of treatment based upon the determination of one of the counselors. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in an alcohol information course or treatment program. If the defendant fails to attend the information course or treatment program, the counselor shall notify the court of the failure.

(5) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section, then all records and data relating to the prior conviction are confidential criminal justice information, as defined in 44-5-103, and public access to the information may only be obtained by district court order upon good cause shown.

(6) For the purpose of calculating subsequent convictions under this section, a conviction for a violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.

(7) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the

1 rules of that facility. The facility may be, but is not required to be, a community-based prerelease center
2 as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the
3 sentencing court.

4 (8) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or
5 subsequent offense, the court may order that a term of imprisonment imposed under this section be served
6 by imprisonment under home arrest as provided in Title 46, chapter 18, part 10."

7
8 **Section 3.** Section 61-11-101, MCA, is amended to read:

9 **"61-11-101. Report of convictions and suspension or revocation of driver's licenses -- surrender**
10 **of licenses.** (1) Whenever ~~any~~ a person is convicted of ~~any~~ an offense for which chapter 5 makes
11 mandatory the suspension or revocation of the driver's license of the person by the department, the court
12 in which ~~such~~ that conviction ~~is had~~ occurs shall require the surrender to it of all driver's licenses then held
13 by the convicted person ~~so convicted~~. The court shall ~~thereupon~~, within 5 days, forward the license to the
14 department and at the same time forward a record of ~~such~~ the conviction to the department, ~~providing that~~
15 ~~if such~~ If that person does not possess a driver's license, the court shall ~~so~~ indicate that fact in its report
16 to the department. The court may also recommend, subject to the provisions of 61-5-208, that a person
17 whose driver's license is suspended due to a violation of 61-8-401 or 61-8-406 be issued a restricted
18 probationary license.

19 (2) ~~Every~~ Each court having jurisdiction over offenses committed under any act of this state or
20 municipal ordinance regulating the operation of motor vehicles on highways shall forward, within 5 days,
21 to the department a record of the conviction or forfeiture of bail, not vacated, of any person in the court
22 for a violation of ~~any such~~ those laws, other than regulations governing standing or parking, and may
23 recommend the suspension of the driver's license of the convicted person ~~so convicted~~. ~~The court may also~~
24 ~~recommend that the department issue a restricted probationary license on the condition that the individual~~
25 ~~comply with the requirement that he attend and complete an alcohol information course as provided in~~
26 ~~61-8-714 and 61-8-722. The department shall issue a restricted probationary license unless the person~~
27 ~~otherwise is not entitled to a Montana driver's license. Upon issuance of a probationary license, the licensee~~
28 ~~is subject to the restrictions set forth thereon and may not operate a vehicle in violation of those~~
29 ~~restrictions.~~

30 (3) ~~Any~~ A court, ~~or other~~ an agency of this state, or a subdivision ~~thereof~~ of the state, ~~which that~~

1 has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report
2 ~~any such~~ the action and the adjudication upon which it is based to the department within 5 days on forms
3 furnished by the department."

4 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0333, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill to prohibit issuing restricted probationary driving licenses to people convicted of driving under the influence of alcohol or other drugs until they complete an information or treatment program, and to require the treatment prescribed be that as diagnosed for them under uniform guidance from the Department of Corrections and Human Services.

ASSUMPTIONS:

1. There are some 7,000 DUI convictions annually.
2. About 60% or 4,200 are first-time offenders.
3. The Department of Corrections and Human Services (DCHS) currently provides uniform guidance for chemical dependency assessments and recommendations and certifies each counselor.
4. DCHS estimates an increase of 218 admissions to the Montana Chemical Dependency Center and state approved community treatment centers for first time DUI offenders. DCHS anticipates a reduction in repeat DUI treatment for second time offenders at the treatment centers for first offenders receiving treatment.
5. Each judge sentences a first-time DUI offender to attend an Assessment Counseling Treatment (ACT) class or chemical dependency treatment program to assess their dependency and counsel offender in ending a chemical dependency.
6. Each judge must use a certified chemical dependency counselor's recommendations for treatment; if more than one counselor assesses and recommends a treatment program, the judge decides which is the most appropriate for the offender.
7. The Department of Justice issues a probationary license only after being officially informed by each judge of the offender's completion of an ACT class or treatment program.

FISCAL IMPACT:

No additional impact by state or local governments or DCHS is anticipated.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

1. First-time DUI offenders will complete an ACT class or chemical dependency treatment program and obtain assistance to defeat a chemical dependency.
2. Judges uniformly will use certified chemical dependency counselor's recommendations to assist the first-time offender to avoid a subsequent DUI.
3. First-time DUI offenders will receive a probationary drivers license only after evidence of attending an ACT class or chemical dependency treatment program.
4. DCHS assumes passage of this bill should decrease the number of repeat DUI offenders needing treatment and could reduce the loss of life and property damage related to these offenders. This bill could also reduce the over-crowding in county jails for this population.

Dave Lewis 2-15-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Al Bishop 2-15-95
AL BISHOP, PRIMARY SPONSOR DATE

Fiscal Note for SB0333, as introduced

SB 333

parolee. The sponsor said they need to be more concerned about the victims out there who are good enough to employ people who have already been in trouble with the law before and to try to protect them. He said he personally knew of three or four cases in which this has happened since he went to work in a county attorney's office. In one particular case, an employer in Missoula County lost over \$50,000 as a result of theft by a person already convicted of theft from a previous employer. He urged passage of the bill.

Proponents' Testimony:

None.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR SHARON ESTRADA asked the sponsor if there was a fiscal note.

SENATOR VAN VALKENBURG said there was not. He said the only cost involved would be a phone call to the employer.

Closing by Sponsor:

SENATOR VAN VALKENBURG closed on SB 350 without further comment.

HEARING ON SB 237, SB 316 and SB 333

Opening Statement by Sponsor:

SENATOR AL BISHOP, Senate District 9, Billings, sponsored SB 237. He said the bill would make it a misdemeanor to have an open container containing an alcoholic beverage in a motor vehicle on any ways of the state open to the public outside of cities and towns. He said it was felt that cities and municipalities would deal with the issue on their own, as many already do. Excepted would be public conveyances that have been chartered for group use, the living quarters of a motor home, recreational vehicle or camper, or a paying passenger in a for-hire vehicle licensed under city, county, or state law.

Proponents' Testimony:

Attorney General Joe Mazurek, said that he and others at the hearing were going to testify on a package of bills, SB 237, SB 316 and SB 333. They are a part of the recommendation of a Task Force appointed by Governor Racicot and himself last June.

• Opening Statement by Sponsor:

SENATOR AL BISHOP continued his opening statement after it was determined by the chairman, proponents and the committee that the three bills were related, and would be addressed in a group method.

SB 316, he said, would provide for a preliminary alcohol screening test by an officer who has a particular suspicion that someone is driving under the influence. This is a breath test that is not mandatory but the refusal to take it will cause the person to have their drivers' license suspended for a year. The bill would also create a new alcohol-related crime for drivers under the age of 21. A blood alcohol of .02 will subject them to the penalty provided. The rationale for this provision is that they are not supposed to be drinking at all. Any level of alcohol in the blood would be prohibited.

SB 333 requires alcohol or drug treatment to be ordered for first-time DUI offenders if a certified counselor concludes that it's needed. The bill would also stipulate that the offender could not be issued a restricted probationary license until the treatment is completed.

Proponents' Testimony:

Attorney General Joe Mazurek supported the package of bills, SB 237, SB 316 and SB 333. In 1993, he said, 194 persons lost their lives on Montana highways. 107 of those died in accidents involving alcohol. Generally over half of all the traffic deaths each year are accidents in which the driver was under the influence of alcohol or drugs. One statistic he noted was that last years' numbers showed 55 per cent of the highway fatalities in the last year were alcohol related, the highest percentage of the total in the last 10 years. In 1983 significant improvements were made in the driving under the influence of drug and alcohol laws. At that time the highway death toll decreased dramatically. It had been at an all-time high of 338 and dropped to 200. It is now hovering at or near that mark for the past ten years. He said the numbers were starting to creep up again and that prompted the legislation. The bills are aimed at target groups. The first one is teens who may be experimenting with drugs and alcohol and driving. They hope to adopt a zero tolerance standard, although it does not created a DUI offense. It deals with them on a similar basis as "minors in possession." Other aspects of the bills address social drinkers who are generally responsible but need a nudge to keep open containers out of vehicles. Another part of the package is the impact it would have on repeat offenders. This group is small in size, he said, but dramatically increasing. In the last 10 years the percentage of multiple offenders has gone from 23 to over 30 per cent. The percentage of second offenders has gone from 19 to 23 per cent. The third-time offenders has doubled from 4 to 8 per cent. He cited an example of a 8-time offender who was involved

in two fatal accidents in Lewis and Clark County. The Task Force recommended the inclusion a fourth-offense DUI felony, and the bills reflect that change.

As a result of the increasing DUI's and increased fatalities arising from those, he and Governor Racicot jointly, with the assistance of the Highway Traffic Safety Division, created a State DUI Task Force which met beginning last June. It included 14 Montana citizens headed by former Yellowstone County Attorney Harold Hanser, who has always been an advocate for stronger DUI laws. They worked collectively, took testimony from law enforcement officials from across the country and Canada, hired expert consultants and put together the package of bills. He said enactment of the bills would allow law enforcement officials in the state the ability to vigorously enforce and perhaps effectively deal with this deadly problem.

Joe Roberts, representing The DUI Prevention Committee, said he had been authorized by Governor Racicot to indicate his full support of the package of legislation before the committee.

John Campbell introduced his wife, Jill. They represented themselves. They testified that their daughter, Jana, was killed last August by a drunk driver. Ms. Campbell told the committee that they were not against drinking, but to ask their support in all of the bills. In Lake County last year, they had five deaths caused by drunk drivers, she reported. Two of them were close to them, their daughter Jana, and her friend, Anita. They were coming home from a rodeo when a drunk driver passed on a double-double line. Their car was hit head-on and Anita was killed outright. Ms. Campbell described the events of the night at the hospital and the subsequent death of their daughter. The doctor that was in charge of the same emergency room in Kalispell was the drunk driver who killed the girls. They also submitted written testimony. (EXHIBIT 1)

Harold Hanser, former Yellowstone County Attorney, represented himself and the State DUI Task Force. He explained the working of the task force. There is nothing in the proposed legislation that does not exist in some other jurisdiction. A technical team from the National Department of Transportation came to Montana and reviewed the DUI laws and had three pages of shortfalls as compared to other jurisdictions. He said that while Montana DUI problems have remained consistent, other states with higher traffic volumes have had decreases. He said the laws in Montana have thus far not allowed for a effective deterrent. A deterrent will work only if people believe something will happen and the penalty will bite. In Montana, he felt, people had no deep feeling that they would be finally convicted of DUI.

Mr. Hanser said that we now know that the blood alcohol content can be accurately measured and tested. We also know that there is a direct relationship between any individuals' ability to operate a motor vehicle safely with the amount of alcohol in the

- system. The impairment starts in the area of .03, he said, and that is why the federal government is going to zero tolerance for people driving commercially. He said that we have a presumptive level at .10. Many states have moved that level to .08. Some are talking about going lower. The average arrest in Montana is at .18. A person at a blood alcohol level of .18 is visibly impaired, or drunk. The most essential tool in this legislation would be the ability to do the on-site testing. He said that the miniature breathalyzers would resolve the issue right on the spot after the driver is stopped by an officer for reasonable suspicion. Without a BAC (blood alcohol content) test, he said, prosecution is a major lawsuit. Many of the cases take a year or more to prosecute and many just fall through the cracks and "go away." In this proposed legislation, the driver can refuse the test, and the penalty would be the same as a conviction from the standpoint of the license. It would be suspended for a period of six months. In Canada, if a person refuses the on-site test, the penalty is the same as conviction. They take the drivers' license and have the car hauled away. In North Dakota, the license is administratively revoked for one year on first offense, two years on the second offense, and three years for subsequent. There are provisions for habitual offenders in these new bills, too. He said there had been problems with the seizure of the vehicle law enacted last session in that people transfer their vehicles to someone else pending litigation. He said that in Canada the first offense is seizure of the vehicle for 30 days. Second offense for a person who continues to drive without a license is forfeiture. He said that non-prison, non-jail sanctions against vehicles and drivers' licenses are the most effective.

Peter Funk, former Assistant Attorney General, lawyer, Helena, said he had worked with the State DUI Task Force to draft this legislation. He had worked with the Motor Vehicle Division when he was attached to the Attorney General's office, so he had experience with existing laws and drafted these bills with a view toward existing structures.

SB 237 is straightforward, he said, and was taken almost word-for-word from the Washington statute. It makes three things a misdemeanor: 1) drinking, 2) possessing, and 3) storage, of open containers of alcohol illegal within motor vehicles. It includes an exception for storage as long as an open container is not stored in an area that is regularly available for the passengers. It would also have a standard misdemeanor offense penalty provision in it. It also excludes areas within the boundaries of cities and towns. This is done in recognition of cities and towns to legislate in this same area.

SB 316 is a bill which combined many ideas into one package, he said. He discussed the preliminary breath testing provision. He said it was an implied consent scheme like the existing scheme, wherein the law enforcement officer has the ability to ask for the test, the driver may refuse, but if the driver refuses, there

are fairly severe sanctions. The bill refers to the existing statutes in terms of procedures and sanctions involved. Currently, a law enforcement official cannot ask for a blood sample until after the arrest has been made. The purpose of the Preliminary Alcohol Screenings (PAS), is to give the officer some alcohol concentration information on the driver in order to help them make up their mind whether to proceed to an arrest. The existing law presumes a person under the influence at .10 or over. The trigger for the stop is a technical legal phrase called, "particularized suspicion." This is the standard for investigative stop and well-recognized in the Supreme Court. It means if the officer has some facts on which they can reasonably suspect that a person is under the influence, it meets the test of particularized suspicions. Examples would be swerving and driving erratically. There is an appeal provision built into that section, as well, that would reference the existing law, so that if the driver refuses the test, it would get into district court very quickly. The rest of the procedural steps in the implied consent law presently are built in to the bill. The PAS would require the Department of Justice to certify both officers and the devices that are used before they are used.

Section 2 would create a new criminal offense in the state, he said, that makes it unlawful for a person under the age of 21 to drive with a blood alcohol concentration of .02 or more. That is the lowest level that the machines can be accurate. Section 3 of the bill is designed to prohibit transfers of vehicles that are subject to forfeiture. Section 4 would make it clear that a prosecution for a DUI may not be deferred. Section 5 amends existing law. This would deal with people who continue to drive when their license is suspended or revoked because of DUI. If the license is gone because of drinking, there would be additional sanctions. On first conviction, there would be a 30-day vehicle seizure and on a second or subsequent conviction, the vehicle would be forfeited. Section 6 of the bill takes the existing implied consent law and changes the penalty for a refusal from 90 days to six months. If a person is convicted of DUI, they would face a 6-month drivers' license suspension. If they refuse a implied consent test, they only get a 90-day suspension. He said it was the feeling of the Task Force that a test refusal ought to be at least as severe as a sanction as being convicted of the first offense. The idea is that more people will take the test, because there isn't much incentive the other way. Section 8 is the DUI sentencing statute. It makes three primary changes: 1) It creates a felony-level offense if the offense is a fourth, or subsequent offense. 2) Convictions would be added over a person's lifetime, if the offense is a fourth, or subsequent offense. Montana presently has a five-year gap. Persons with convictions earlier than five years are sentenced as a first-time offender; previous convictions are disregarded. 3) The DUI offense may not be deferred. Section 9 would provide that the same three changes mentioned are made in the excessive alcohol concentration offense, in other words, fourth offense felony, convictions for a lifetime and no

deferrals. Two other changes include expunging of records to address the five-year gap. Presently the Department of Justice takes all records relating to that particular defendant before the gap, and destroys them. They proposed to make that information confidential criminal justice information and public disclosure would not be allowed without a court order. It would exactly match the language of the DUI statute. The second provision would say that a person convicted of a concentrated alcohol offense, any earlier DUI's would be counted the same as a BAC offense.

SB 333 is focused on the treatment of DUI offenders. Presently there are a multitude of different mandates involving treatment. First-time offenders have to do an alcohol information course and may or may not be ordered to undergo treatment. Second or subsequent offenders must undergo treatment. This bill would change the provisions to read: 1) If the offender is found to be chemically-dependent on a first conviction, they must undergo treatment. 2) If the courts order treatment, they must order it based on the opinion of the certified chemical dependency counselor and that counselor must use accepted and adopted statewide guidelines. The language would also give the judge some guidelines when facing two counselors. 3) Changes are designed to tell the Department of Justice they may not issue probationary drivers' licenses until the person has COMPLETED whatever treatment is proscribed.

Nancy K. Jovin, Ravalli County DUI Task Force Coordinator, said she got the job as a result of a drinking/driving accident herself. She was a bride and a widow in the same day when she and her new husband were involved in an accident. She had 18 reconstructive surgeries at a cost of hundreds of thousands of dollars. She said that the cost in lives and dollars in Montana is immeasurable from drinking drivers. Ms. Jovin said the open container law was past due. She discussed and was in agreement with the provisions of the intended legislation. She submitted written testimony. (EXHIBIT 2)

{Tape: 1; Side: B; Approx. Counter: 00}

Darryl Bruno, representing the Department of Corrections and Human Services, said that the Department stands in support of SB 316, Section 2 and view it as a very good instrument for the DUI program. They hoped it would reduce the number of first offenders. SB 333, by requiring the first offenders to attend treatment, will reduce the number of repeat offenders, he said. Ultimately, it would reduce property and medical damage, loss of life and probably do a part in reducing some of the overcrowding in the jails. He also submitted written testimony. (EXHIBIT 3)

Colonel Craig Reap, representing the Montana Highway Patrol, said that their organization supported all of the changes and new laws regarding DUI offenses. They were part of the Task Force as well. He said it was frustrating to law enforcement officials to

meet and greet the same individuals on a repeat basis. He said that in particular, the portable breath testing device, will give them another tool to use. He urged support of the bills.

Mark Cady, Police Officer, Billings, and a member of the DUI Task Force, voiced his support for the bills. He said he had been a victim of a drunk driving accident. He had investigated over 50 fatalities in his career and every one of them involved a drinking driver. The portable breath analyzer would be a very valuable tool, he said, in the fight against drunk driving. He discussed the revocation of the license penalties. Currently, if a person is convicted of a DUI, their license is revoked. If a person is a habitual offender, their license is revoked. This bill would provide for the impounding of the car or making it inoperable. The second offense would cause forfeiture. He stated that the drivers' license does not turn the key to the car. He said the proposed legislation package would be a help to police officers and all Montanans.

George Bonini, representing the Montana Traffic Education Association, confirmed that the Association supported the legislation. They had a particular concern with SB 237 because of the increase in young people drinking in vehicles. They hoped the open container law would address that problem. He urged a Do Pass resolution.

Clarence Brazil, Polson, represented himself. Mr. Brazil said that Montanans seemed to think they had the God-given right to drive drunk. He quoted the figures from SB 237, saying Montana recorded 7,000 DUI convictions annually. He said it was close to 10 per cent of the population. He said there was a disregard for loss of life. The suspension of the drivers' license was important to him in regard to multiple offenders. He said many of the drunk drivers end up with suspended sentences and serve no jail time.

Peggy Wheeler, represented herself. Ms. Wheeler related that her daughter, Anita, was one of the girls killed in Kalispell by a drunk doctor. She said people convicted of negligent homicide in her area were given 90 days with 30 days in treatment and 60 days in jail. She felt it was not enough. She asked the committee to get the drunk drivers off the road.

Bill Ware, Police Chief, Helena, also represented The Association of Police Chiefs in Montana, and served on the DUI Task Force. He supported the three-piece legislative package. He stated that in the Helena area up to 50 per cent of the DUI convictions were repeat offenders. He said the offenders were going through the system again and again.

Jerry Archer, representing the Billings Police Department and member of the DUI Task Force, said that since January 1, he had responded to three fatality accidents, two involving alcohol. It has to stop, he said.

- Troy McGee, Captain, Helena Police Department, represented the Montana Police Protective Association. He said the membership was made up of approximately 450 police officers around the state. The Association strongly supported the bills, he said.

Francie McLean, Gallatin County DUI Coordinator, asked to add Gallatin County's support to the package of legislation. She submitted five pages of signatures to support the bills.
(EXHIBIT 4)

Tom Huddleston, representing the Helena City Commission, Lewis and Clark DUI Task Force and himself, submitted the following letter. (EXHIBIT 5)

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR MIKE HALLIGAN stated that he was on the Task Force. The juvenile sentencing laws were not going to be changed but rather the thresholds would be changed. The quickest way to get to a juvenile was taking the license away for a longer period, he said. He said it was 90 days. He asked Mr. Hanser if the Task Force had considered extending juvenile laws as well?

Mr. Hanser said they did not. The main emphasis, he said, was to get to the zero tolerance.

Peter Funk said the idea was to use the minor in possession charge. There was some consideration given to having a youth sentenced under the DUI statute if they were convicted of the new offense included in the bill. But because of the difference in the blood alcohol level, they did not feel that it was appropriate to have the same sanction that an adult would have at .10. The first offense under the statute is a 90-day confiscation of license which would be done by the local sentencing judge. The Motor Vehicle Division in Helena would become involved on a second conviction in terms of a formal suspension.

SENATOR HALLIGAN asked Mr. Funk if the juveniles could get a probationary license during that time. Mr. Funk thought so. The senator further inquired about breath testing and blood testing. Mr. Funk said he did not intend that a blood test would be administered, but a portable breath test would. SB 316 would not authorize a urine or blood test, he said.

SENATOR HALLIGAN asked if the machines were sophisticated enough to determine the .02 for juveniles and if the results would not be contested in court? In the past, defense attorneys had claimed the breathalyzers were not accurate, he said.

Mr. Funk said the people at the crime lab had maintained they were accurate from .02 and up, which is the criminal level in the new youth statute. There would be a period of time to certify the machines, making sure the State Crime Lab was comfortable with their use. Many other states use them now.

SENATOR HALLIGAN asked if there was enough money to make sure they were accurate. Also, he asked Mr. Hanser about the third offense as opposed to the fourth offense as a felony. Are other states doing this on the fourth offense? Where did they reach that threshold?

Mr. Hanser said they started with the enhancement. There was so much interest for a fourth offense, but he considered it a judgement call. On the device discussion, he said that the field machines were used in California and allowed in court. In Montana, the hand-held devices would be a preliminary action and people would be allowed to take the test on the larger device.

SENATOR LORENTS GROSFIELD asked Mr. Funk about SB 237, 1B and 1C. He asked what the difference was between possess and keep.

Mr. Funk said that possession was a harder issue to prove. In order to "possess" under the law, a person has to have the ability to control, and the ability to terminate control. It would be a natural progression from drinking, to possession, to storage, with drinking being inside the body. Storage is another angle to have a prosecutable offense, he said, if possession or actual drinking cannot be proved.

SENATOR GROSFIELD said they could keep it in the trunk, but they could not possess it in the trunk. He asked if anything could be in the vehicle as far as possession goes.

Mr. Funk said it was true. He did not know how a person could possess something in one of those areas that is not available to the passengers unless you are also in that area. He thought possession was only to be used where the container is seen in the hand.

SENATOR GROSFIELD asked if he planned a kegger and he was the designated driver, and they put their empties and some leftover liquor in the car and are heading home, would he be in trouble even if he had not had anything to drink?

Mr. Funk said he would have a problem under the storage paragraph.

SENATOR GROSFIELD said there would be no incentive for a designated driver status.

Mr. Funk said it would be true, if they had an open container. He said he hope the designated driver concept would be used beyond the transportation of alcoholic beverages, perhaps for

people traveling home at night without drinks with them. Clearly, the bill would make it unlawful to have alcoholic drinks in the passenger compartments of vehicles. It would apply to designated drivers or anybody driving.

CHAIRMAN BRUCE CRIPPEN asked if bottles of alcohol were transported from one house to another in the trunk, would it violate the provision?

Mr. Funk referred to Subsection C, following "unless" on Line 21, which says that open containers of alcohol can be transported.

CHAIRMAN CRIPPEN followed with, "if the registered owner is not present in the vehicle."

Mr. Funk said the qualifying language applied only to the phrase, "or the driver." The person that is responsible for the storage violation is either the registered owner or the driver.

SENATOR GROSFIELD asked about the kegger example. He said what was not consumed should be dumped on the ground.

Mr. Funk said they could put it in the trunk.

SENATOR GROSFIELD asked if an empty can may contain a milliliter of beer. Would that be an open container in a technical sense?

Mr. Funk said it may be something that should be clarified. He did not disagree with that, but thought that a police department or prosecutor would not want to go further with a suit based on that information.

SENATOR STEVE DOHERTY asked about a situation of adults and children in a Suburban in which beer and pop was mixed in a cooler.

Mr. Funk said the cooler had better be in the back end.

CHAIRMAN CRIPPEN asked if having a beer out in the wilderness was in violation as long as it happened in the car?

Mr. Funk said it would be correct. He added that there was nothing in the open container that would allow a law enforcement officer to go in that cooler (on SENATOR DOHERTY'S question) or to open a closed cooler or package inside a vehicle. It does not give law enforcement any greater ability to look in things than they already have now.

SENATOR GROSFIELD asked to follow-up. He said on Lines 22 and 23 of Subsection C, it says the utility or glove compartment is considered to be within the area. He said those two compartments are sealed, so there was an implication that an officer would be looking into those. And he wondered why they were even in the bill?

Mr. Funk said they were there because they were part of the Washington statute. He would not read the language as giving police an increased ability to conduct searches and seizures. He said it could be stricken.

SENATOR LARRY BAER said that search and seizure was covered by present law. He said people had better know the law. In a Suburban, they should store the alcohol in the back, away from the driver.

SENATOR BISHOP asked Mr. Funk about the kegger question. On Line 17 of SB 237, Page 1, it says, "where contents are partially removed," and he wondered if a sharp defense lawyer could pounce on that?

Mr. Funk said sharp defense lawyers will seize on every word of the bill in defending their client. He said they could perhaps come up with finely-tuned language.

SENATOR BISHOP asked if it would help to say, "fully," or "completely," or "partially"?

Mr. Funk said it was up to the committee.

Valencia Lane stated that the point of the bill was to prohibit open containers in the car, meaning you are not supposed to be drinking as you are driving. She did not think that the intent of the bill was that a person was not to have empty cans in the car, rather open containers. She did not know if they should amend the bill to include empties.

Mr. Funk said a sentence could be included that said, "this section of law is not intended to include empty beverage containers."

CHAIRMAN CRIPPEN asked if all incorporated cities and towns in Montana had open container laws?

Mr. Funk said it was not the norm.

CHAIRMAN CRIPPEN asked Attorney General Mazurek if the state could supersede local law in cities and town?

Attorney General Mazurek responded that most major communities had open container rules. In a number of smaller communities, they waive them for events, such as the Augusta Rodeo, he said. He said the state did clearly have the authority, but they may want to consider these special events.

Captain Troy McGee said that the open container law in Billings covered all public property in addition to vehicles. These bills would apply only to vehicles. Local control is generally the public property type of control, he said, like in a park.

SENATOR BISHOP asked Mr. Funk about Line 13, Page 1, of Subsection 237. He said that it mentions an incorporated city or town. He asked about Reedpoint, which is not an incorporated town, and how the bill would relate to their sheep event?

Mr. Funk said that the bill would cover unincorporated areas. He said unincorporated cities and towns do not have the authority to legislate in this area. They cannot pass ordinances.

SENATOR GROSFIELD referred to SB 361. He asked about the certification of devices by the Department as mentioned on Page 2, Subsection 8. He asked if they were certified periodically?

Mr. Funk said the certification would remain in effect as long as the instrument make and model did not change.

SENATOR GROSFIELD asked a technical question on Subsection 2 on the .02 alcohol count. He quoted current statute, 401, Subsection 4A, "if there is less than .05, it may be inferred that the person was not under the influence." He asked if that would be inconsistent?

Mr. Funk said he did not think so. He said they were not making any statement about whether a person is "under the influence." They were just referring to the blood alcohol level.

SENATOR GROSFIELD referred to Page 4, Subsection 6, regarding seizure of the car, "owned and operated by the convicted person." He asked if that excluded a car that was borrowed. Mr. Funk said that was correct. The senator further inquired about multiple DUI offenders who might register the car in their wife's name.

Mr. Funk replied that the forfeiture law was passed in 1991. He referred to Line 21, concerning joint ownership. He said that type of scheme exists in the language and they had attempted to build it into these new bills. It says that joint ownership shall not be barred to these types of actions, but gives the court an "unless", or an out, so that the car would not be taken from an owner at the judge's discretion. Joint ownership generally should not be a bar to those types of actions, he said.

SENATOR GROSFIELD asked if the 10-time DUI offender had his own car, yet registered that car in his wife's name, would he be able to prevent the court from taking the car?

Mr. Funk said this was correct, unless it was registered in a joint situation. If the car is registered in any other parties' name, and the drivers name is not on that registration, that car is not subject to this process.

SENATOR GROSFIELD referred to Page 5, Line 10. He asked about the test for drugs, "may not be given."

Mr. Funk replied that it was part of a compromise reached by the last legislature to authorize drug testing.

SENATOR GROSFIELD asked about the .01, .02., .05 classifications of consumption and wondered what it would take (in terms of 3 beers, 4 glasses of wine, etc.) to register these amounts. Several of the proponents answered that it would depend on the size of the person, body weight, food intake, and many other variables.

Albert Goke, Minister of the Highway Traffic Safety Division, said that for a minor, typically one beer would make them show in excess of .02.

SENATOR GROSFIELD asked about the reasons behind a temporary permit on Line 23.

Mr. Funk said the intent was to enable someone whose license is taken to exercise their right to appeal. It is a Constitutionally-protective mechanism more than anything else, that allows a person a time period in which to address filing an appeal. He said they were taking a license, which has been held to be some form of a property right, without any kind of a hearing. It allows for a hearing or a fact-finding body as fast as possible after the license has been taken.

SENATOR GROSFIELD posed a problem with a person driving drunk on a 72-hour permit. Would the person just get another one, he asked?

Mr. Funk said he was not aware of a process for taking away the 72-hour permit.

SENATOR ESTRADA discussed the alcohol content in a glass of wine with Officer Cady. It was ascertained that too many variables would exist to determine what the blood count would show. She liked the bills, but wanted assurance that they would be done right.

SENATOR LINDA NELSON asked if they had enough portable breath testing devices to implement the bill? And therefore, would they need a fiscal note, she asked?

Mr. Funk answered that nothing in the bill requiring them to have the equipment and they understood it would take time. They had some now, he said, and \$100,000 had been allocated for the 1996-97 for the Department of Justice to help equip the officers with the devices. The devices cost about \$500.

{Tape: 2; Side: A; Approx. Counter: 00}

SENATOR REINY JABS asked about the forfeiture of a parents' car

if a teenager violated the rule?

Colonel Craig Reap said it would not apply.

SENATOR DOHERTY asked for a definition of motor vehicle. Also, he wondered if a boat, tractor or snowmobile would be covered.

Mr. Funk said the definition was broad, but would not include tractors, snowmobiles or boats.

SENATOR DOHERTY asked about the public safety issue and wondered why they did not deal with all the high-powered machines.

Mr. Funk agreed that perhaps it should be done, but was certainly not written in this package as it was.

Closing by Sponsor:

SENATOR BISHOP closed on Senate Bills 237, 316 and 333 without further comment.

EXECUTIVE ACTION ON SB 350

Motion: SENATOR GROSFIELD MOVED THAT SB 350 DO PASS.

Discussion: CHAIRMAN CRIPPEN was concerned that the person would never get another job. He said he would probably vote for the bill anyway.

SENATOR SUE BARTLETT saw some irony in the bill. She said a bill in the last session regarding stalking, SENATOR VAN VALKENBURG opposed that because of increased workload and potential liability. What would happen if the department slipped up and failed to notify an employer?

Vote: The MOTION CARRIED on an oral vote, with SENATOR BARTLETT voting, "no."

EXECUTIVE ACTION ON SB 237

Motion: SENATOR BISHOP MOVED THAT SB 237 DO PASS.

Discussion: SENATOR NELSON said she was concerned about hunters. She had some sympathy with people not being able to have a drink when they are out in the country. She also expressed some concern over a football game, perhaps people would want a little schnapps and hot chocolate. The bill would require the people to sit outside. She suggested a change to "moving" vehicle.

SENATOR RIC HOLDEN said the countryside may become a dump ground for the empties people will feel forced to throw out. He said the bill would take from the idea of a responsible designated

they would have to pay the piper on a second offense.

CHAIRMAN CRIPPEN asked if SENATOR HOLDEN meant that those who can afford it will suffer the consequences of their actions, but those who cannot afford it ought not to be able to suffer the consequences of their actions?

SENATOR HOLDEN said it would enter in, certainly.

CHAIRMAN CRIPPEN raised the question if a low income person should be given another chance to hit somebody on the highway.

SENATOR HOLDEN said they intended to take a lethal weapon away from a drunk driver. But if they confiscated cars from median-income people, would they in some way be increasing welfare rolls by rendering people unable to work? Would they lose their jobs?

SENATOR JABS said there were car pools, friends, neighbors and horses.

SENATOR BAER said that after the first couple of offenders are punished and into the newspapers, this could be one of the most powerful deterrents for second offenders.

SENATOR HALLIGAN said the forfeiture of the car would apply only to second offense of driving while suspended, not merely second offense DUI.

CHAIRMAN CRIPPEN said by then their insurance probably had been lost as well. He said it was poor public policy to have those people driving anyway.

Vote: The MOTION THAT SB 316 DO PASS CARRIED UNANIMOUSLY on an oral vote.

EXECUTIVE ACTION ON SB 333

Motion/Vote: SENATOR BISHOP MOVED THAT SB 333 DO PASS. The MOTION CARRIED UNANIMOUSLY on an oral vote.

EXECUTIVE ACTION ON SB 212

Discussion: SENATOR HALLIGAN asked how the committee felt about an amendment to provide a notice to the non-party by regular mail when the answer is filed that they had been mentioned in a lawsuit. He thought the people would like to know, even though they cannot intervene, and they could contact the plaintiff to defend themselves. He said Mr. Alke had no objections.

EXECUTIVE ACTION ON SB 206

DATE _____

2-15-95

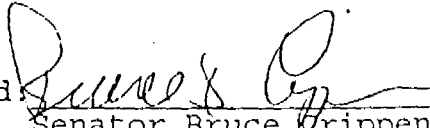
SEN:1995
wp.rollcall.man

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 15, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 333 (first reading copy -- white), respectfully report that SB 333 do pass.

Signed: 

Senator Bruce Crippen, Chair

 Amd. Coord.

 Sec. of Senate

391257SC.SRF

I would like to start out by saying that I am not here to tell you all not to drink. We like to go out and have a few drinks now and then. We listen to the band and meet with friends, but we walk or else one of us doesn't drink.

I am here to ask you to support Senate Bills 237, 316, and 333.

As you know all three of these Bills are designed to strengthen and eliminate loopholes in existing D.U.I. laws.

A good example would be the use of hand held Breathalizers for Policemen, also I agree with the .02 Blood Alcohol level for minors. Montana is way behind the times without an open container law. I especially agree with the Courts being able to use all previous D.U.I. convictions instead of erasing them after 5 years.

In Lake County alone, last summer we had five deaths caused by Drunk Drivers. Two of the deaths were very close to Ms. May daughter Jana and her friend Anita Myers. They were coming home from the Rodeo in Kalispell at about 10:30 P.M.

When a Drunk Driver went to pass over a double-double yellow line. They didn't have a chance! He hit them head on going between 80 and 90 miles per hour. Anita died at the scene, Jana was unconscious and was flown by helicopter into Kalispell.

Unless you are a parent and have received one of these Midnight phone calls you will never know the fear, pain, and anguish that grips your heart.

They didn't tell us much over the phone, so the one hour drive to Kalispell was hell. Your first thought is that this can't be happening to Us. We are supposed to be leaving on vacation in the morning, everything is packed and ready to go.

When we got to Kalispell and the Doctors finally came in to tell what was happening, He said the Cat Scan showed that her major organs were O.K., There were no broken bones but she had sustained major head injuries from the sudden impact even though Jana was wearing her seat belt.

EXHIBIT 1DATE 2-15-9511 SB 237, 316 + 333

The Doctor told us we could go in and see her in a minute. Part of me wanted to run right in there, but part of me didn't. I didn't want to see her hooked up to all those machines, lying there so helpless. The doctor then told us we should be with her because it might be the last time we see her alive. We went in, I hadn't cried much yet but seeing her unconscious like that tore my heart out. I managed to tell her I loved her and that she was strong and could beat this. Later we broke down. The next two days were a living Hell. Jana died August 21st because the Doctor that was in charge of that same emergency room that treated her decided to drink excessive amounts of alcohol and drive his truck!

John Campbell
John Campbell

SB 316 Sec. 5

As there is no deterrent to not drive while a person's driver's license is suspended or revoked, we have got to get stiffer laws that would stop the problem we have now with multiple offenders. In Ravalli County Jail right now we have three multiple DUI offenders. They don't seem to mind our penalties as they are now. However our law enforcement, and our judges are reluctant, to say the least, about enforcing this law already. This section also states to "render inoperable" and that will be more easily enforced. Subsection 5 Joint ownership is also addressed in regard to seizures and is not a bar to such actions, with an "out" for the truly innocent joint owner. Similar language is already found in the existing forfeiture procedure. Subsection 7 is again a must. Suspending or deferred penalties are used to give the multiple offender another chance to kill or injure others, costing all of us more than any of us can imagine. Why make a law if it is not going to be enforced?

SB 316 Sec. 6

This is simple to me. Finally something that is really logical. Why would a person not refuse if the penalty is only 90 days compared to 6 months? They can plead not guilty, have their day in Justice Court, then appeal and have another day in District Court. This refusal thing has gotten way out of hand.

SB 316 Sec. 7

Consistency is not only important but easy to practice. Let's amend the generic forfeiture provision to be consistent with section 5 and be subject to the same existing procedures. Sec. 8 Multiple offenders are truly our biggest problem. When it comes to risking lives. Remember driving while impaired is a crime. Let's make the laws show we are serious about this problem, not social but criminal. DUI's are a violent crime. Three strikes and you are out. Subsection 6 Forth time offenders, whether or not it happened 5 years or ten years apart should be a felony offense. Once the offender has shown society that they refuse to take DUI laws seriously they are a dangerous offender, and not safe to society. Subsection 9 Why did 1991 Legislation change or fix something that was not broken? Slowly I guess. No deferred sentences.

SB 316 Sec. 9

There really is no reason why the department should destroy such criminal records. The information is not publicly available but is still to prosecutors and the courts. It is confidential criminal justice information. If a person has a track record that is going to put us all in danger, shouldn't we keep track? Subsection 8 has two convictions that are almost identical. The only difference being, alcohol concentration level from testing is generally present in excessive concentration offenses. They are identical offenses and should be treated as such.

SB 333 Subsection 4 section 2

...in dealing with DUI offenders. A judge is

EXHIBIT 2

DATE 2-15-95

SB 237, 316, 333

SB333 cont.

Councilors can determine the best recommendations. Also in section 4 if, on the second or subsequent offence two councilors can't agree on treatment, a judge could, after seeing all the evidence, make recommendati

SB 333 Sec 1 & 3

It states that probationary drivers licenses will not be issued until the course of treatment is completed. This only makes sense to me. Why reward an offender and give them back the privilege to drive if they are not willing to complete treatment? What would the incentive be? Why even take away the privilege in the first place?

This bill, in the way that it is ^{written} seems to treat excessive alcohol concentration sentencing differently. What do prosecutors know about chemical dependancy that qualifies them to recommand different treatment? In my experience an alcoholic is alcholic and treatment does work in many cases. That is our priãry purpose isn't it? To stop drinking and driving in return we have safe highways, and the huge losses that we are experiencing now to decline?

SB 333 Testimony

This bill introduced by Senator Bishop is supported by the Department of Corrections and Human Services (DCHS) Alcohol and Drug abuse Division (ADAD).

Requiring 1st time offenders, who are chemically dependent, to go to treatment, will reduce the number of repeat DUI offenders by intervening in there lives earlier. If we reduce the number of repeat offenders we should reduce the loss of life and property damage and play a part in reducing the over crowding in jails as repeat offenders have longer jail times.

DCHS/ADAD is the agency responsible under 53-24-208 for approving the facilities eligible to provide the DUI alcohol information course. ADAD also currently develops the diagnosis and placement rules (standards) referred to in this bill (61-8-714 (4)), all certified counselors would be required to follow.

The department is also the agency given legislative responsibility for certifying chemical dependency counselors who determine if the 1st time offender is chemical dependent.

Passage of this bill will reinforce the message that you don't drink and drive.

Respectfully submitted



Darryl L. Bruno, Administrator
Alcohol and Drug Abuse Division
Department of Corrections and Human Services

Gallatin County

DUI TASK FORCE

104 East Main—Room 313 First Bank Building
Bozeman, Montana 59715
406-585-1492

Education • Awareness • Enforcement

SENATE JUDICIARY COMMITTEE

DRIFT NO. 4

DATE 2-15-95

VIA REG. SB 237, 316, 333

February 14, 1995

Judiciary Committee
Montana Senate

Exhibit No. 4 includes 5 pages of signatures. The original is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694

To Whom It May Concern,

The Gallatin County DUI Task Force would like to express its strong support of Senate Bills 237, 316 and 333. Senate Bill 316 in particular is vital to the effort to make Montana roads and highways safe from impaired drivers.

During the Montana Winter Fair held in Bozeman in January of this year, our Task Force did a week-long DUI education program for fair patrons. We provided information and rationale for the legislation contained in Senate Bills 237, 316 and 333. The support for strong DUI laws and strong DUI enforcement was overwhelming. Attached to this letter are sheets containing names and addresses of registered voters who wanted legislators to know that impaired drivers must be kept off Montana roads.

People are particularly outraged that multiple DUI offenders are still driving and killing innocent people. Impaired drivers should be held responsible for their actions. Please support this effort for more effective DUI laws.



Francie McLean, Coordinator
Gallatin County DUI Task Force

DUI LEGISLATION TESTIMONY

SENATE JUDICIARY COMMITTEE

Submitted By: Tom Huddleston
Representing: Helena City Commission
Lewis & Clark DUI Task Force

EXHIBIT NO. 5
DATE 2-15-95
FILE NO. SB 237, 316, 333

MR. CHAIRMAN. MEMBERS OF THE COMMITTEE. I'M HERE TODAY TO SPEAK IN FAVOR OF THE DUI BILLS AND ALL LEGISLATION THAT STRENGTHENS ENFORCEMENT AND DENOTES APPROPRIATE CONSEQUENCES FOR DUI INFRACTIONS. I COME BEFORE YOU ON BEHALF OF THE HELENA CITY COMMISSION AND THE LEWIS AND CLARK DUI TASK FORCE. I'VE BEEN A MEMBER OF THE CITY COMMISSION FOR SEVEN YEARS AND CHAIRMAN OF THE COUNTY TASK FORCE FOR YEARS.

IT SHOULD BE OBVIOUS WHY I WOULD ENCOURAGE ENFORCEMENT AND CONSEQUENCES FOR REPEATED CONVICTIONS OF DUI LAWS. DRUNK DRIVING IS A SERIOUS PROBLEM IN OUR STATE AND DRUNK DRIVERS KILL AND MAIM. REPEAT OFFENDERS IGNORE THE IMPOSED CONSEQUENCES AND BECOME UNINSURED AND UNLICENSED, BUT REMAIN DRIVERS WHO DRINK. TOO MANY OF US CONTINUE TO SEE THIS AS A SOCIAL PROBLEM AND SHAKE OUR HEADS AT THOSE WHO CONTINUE TO CALL FOR MORE AND STIFFER LAWS. AFTER ALL, WE'VE PROBABLY ALL DONE AT LEAST ONCE. ...THERE BUT FOR THE GRACE OF GOD, GO I.

I'D LIKE TO TALK TO YOU ABOUT THAT NOTION. IT'S ONE THAT I SHARED FOR A LONG TIME. I WOULD LIKE TO PROPOSE THAT IF YOU ENACT THIS BILL AND OTHERS LIKE IT, YOU WILL NOT ONLY BE SERVING OUR COMMUNITIES, YOU WILL ALSO SERVE THE OFFENDER. I AM AN ALCOHOLIC AND WAS A PROBLEM DRINKER FOR FIFTEEN YEARS. DURING THAT TIME I DROVE AND DRANK. AFTER LONG NIGHTS AT EITHER PARTIES OR THE BARS. EVEN ON TRIPS ACROSS THE STATE. THERE, BUT FOR THE GRACE OF GOD...NO, I DIDN'T HAVE AN ACCIDENT WHILE DRIVING THAT HURT ANYONE. BUT I DID PARK ON MY SIDEWALK. RAN INTO FENCES. LEFT MY ENGINE RUNNING WHILE I SLEPT IN THE CAR. AND EVEN JOKED ABOUT IT. I WOULD OFTEN RECENT ABOUT HOW "OLE BETSY" KNEW THE WAY HOME. ALL I HAD TO DO WAS PUT THE KEY IN, START HER UP, AND SHE DID THE REST. THEN WE'D ALL CHUCKLE.

THREE YEARS AGO, I GOT LUCKY. I COMMITTED ANOTHER KIND OF STUPID DRUNK TRICK, BROKE THE LAW AND HAD THE CONSEQUENCES ENFORCED. FOR THE FIRST TIME, SOCIETY DIDN'T ENABLE ME TO CONTINUE MY FORM OF SOCIAL BEHAVIOR. INSTEAD, THEY SAID "CLEAN UP OR GO AWAY." THERE WERE NO EARS TO HEAR MY LAME EXCUSES OR PLEAS FOR MORE TIME. WELL, I WENT AWAY AND CLEANED UP. I GOT THE HELP I NEEDED.

TODAY, I START ANOTHER CHAPTER IN MY FOURTH YEAR OF RECOVERY. AND MY LIFE IS FULL. I HAVE A LOVELY FAMILY AND A BRAND NEW GRANDDAUGHTER. I LIVE IN A GREAT COMMUNITY AND STATE AND I CONTRIBUTE. I REDISCOVERED THAT THE WEEK HAS SEVEN DAYS AND I ENJOY THEM ALL. AND IN EACH OF THEM, I AM IN CONTROL OF EVERYTHING THAT I DO OR USE.

ON BEHALF OF ALL OF MY BROTHERS AND SISTERS WHO ARE NOT IN CONTROL, PLEASE DO NOT ENABLE THEM ANY LONGER. SAVE THEIR LIVES AND YOURS. PLEASE MAKE THE CONSEQUENCES MEANINGFUL FOR RECOVERY FOR THEM ALSO.

THANK YOU.

DATE 2-15-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB237 SB316 SB 333 SB350

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
CLARENCE BRAZIL		SB237	X	
CLARENCE BRAZIL		SB316	X	
Albert & Ette	High. Traffic Safety	SB 333, 237 316	X	
Mann Stanley	YMC/DUI Task Force	237 316, 333	✓	
Jerry Archer	DUI Task Force Billings Police	237 316, 333	✓	
Harold Hansen	State DUI Task Force	237, 316, 333	✓	
JOE ROBERTS	DUI Prevention Council	237, 316, 333	✓	
John & Jill Campbell	SELF	237 316, 333	✓	
Peggy S Wheeler	SELF	237 316, 333	✓	
Greg Reap	MHP	11	✓	
Mark Gady	Billings Police DUI TASK FORCE	237, 316, 333	✓	
Nancy K. Jovin	Ravalli County DUI Task Force	237, 316, 333	✓	
DANIEL BIRLICK	DCAS / ADAD	Sec 237, 316, 333	✓	
GEORGE BONINI	MTEA	237	✓	

WM. J. WARE, Chief of Police Mt. Assn. of Chiefs of Police 237, 316, 333 ✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-15-95

SENATE COMMITTEE ON

Judiciary

BILLS BEING HEARD TODAY: SB 237 SB 316

SB 333

SB 350

< ■ >

PLEASE PRINT

< ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
STEVE E. RANDOLPH	ZAPATA'S REST		X	
Bob Campbell	SEN.	237		X
Kathy McGowan	CDPM, MSPD A	316		
Kathy McGowan	" "	333		
Mike Ruggen	Boyd andrew CDCG	333	X	
Troy McOep	Mont Police Protective Assoc	237 316 333	✓	
Francie McLean	Gallatin Co DUL	237 316 333	X	
Dennis Paxinos	Yllustre Co Atty	D.F. Bills	X	
Tom Huddleston	City of Helena	DUL	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

{Tape: 1; Side: A}

HEARING ON SB's 237, 316, 333

Opening Statement by Sponsor:

SEN. AL BISHOP, SD 9, introduced SB's 237, 316, and 333 as a result of a State DUI Task Force appointed by the Governor and the Attorney General. Montana is known as a "hard-drinking" state and he said that it currently ranks second or third in the United States in alcohol consumption. SB 237, commonly known as the open container bill, would make unlawful the drinking, possession or storage of open containers of alcoholic beverages in motor vehicles. It would provide that open containers could be in motor vehicles if they were not in the passenger area and other exceptions included for-hire vehicles, recreational vehicles and campers. The jurisdiction would encompass areas outside incorporated city limits.

SB 316, he said, would be covered by proponents' testimonies.

SB 333 would provide for a first-time DUI offender to receive chemical dependency treatment after being evaluated by a counselor.

Proponents' Testimony:

Attorney General Joe Mazurek appeared as a proponent of the three bills. He related statistics involving traffic accidents and the percentages of alcohol-related accidents as evidence of the need for these bills. He summarized the package of legislation as having an impact on teenagers who experiment with alcohol, on social drinkers and a significant affect on repeat offenders. He said the percentage of multiple DUI offenders has increased from 23% - 30% over the last several years. The percentage of second-time offenders has gone from 19% - 23% and the percentage of third-time or more offenders has gone from 4% - 8%.

Joe Roberts, DUI Task Force, spoke on behalf of the Governor's office to say that the bills had been reviewed and were supported by him.

Mike Schultz presented written testimony as a father of a victim of a DUI offender. EXHIBIT 1

{Tape: 1; Side: A; Approx. Counter: 23.8}

Harold Hanser, DUI Task Force Chairman, spoke in support of these bills. He said drinking and driving can no longer be considered a social indiscretion and it is the most serious crime in Montana from the standpoint of impact on lives. In all other states the statistics regarding DUI deaths have gone down. In Montana, they have stayed the same. He said the question in the open container

law was one of maturity. He said the open container law would be a message as much as anything else to the youth. He urged the committee to accept the DUI legislation package in an effort to save lives and affect the economic impact of drinking and driving.

Tom Huddleston, City of Helena, spoke in favor of the three bills. He proposed that enacting these bills would be serving the community as well as the offenders. He testified about his personal problem with drinking and how having been arrested and having had the law enforced had changed his life.

Mike McGrath, Lewis and Clark County Attorney, Montana County Attorneys Association, addressed SB 316 in particular. He said this provision would make the fourth DUI offense a felony and would address the problem with repeat offenders by giving more options in prosecution.

Ellycia Taapken, DUI Task Force, supported passage of all three of the bills. She said that these bills were not as strong as statutes in some other states, but that these were steps in the right direction. She referred to national statistics regarding DUI offenses.

Peter Funk, DUI Task Force, said he had worked with motor vehicle laws in the state when he was with the Department of Justice and had drafted the language of the bills. He "walked" the committee through each of the bills.

He said that SB 237 was patterned after the Washington State statute and that it was fairly straightforward. He pointed out the distinction which had been drawn between moving and nonmoving vehicles in the changes made in the Senate. The prohibitions on moving vehicles were made broader than those for not in motion.

SB 316 would provide for numerous changes in how the law would treat drinking and driving offenders. Under current law, law enforcement officers have no ability to obtain blood alcohol information until after the arrest. This section would authorize a pre-arrest test for the purpose of determining whether there is probable cause to continue with that type of investigation. He said it was designed to mirror the implied consent scheme and various sanctions. A safeguard is that officers are not authorized to implement the scheme until both the officers and the devices are certified by the department.

Section 2 of the bill would create a new offense which would deal with a person under the age of 21 driving with a blood alcohol concentration of .02 or more. Section 3 of the bill addressed the forfeiture of vehicles and transfer of licenses in DUI charges. Section 4 would outlaw deferred prosecutions of DUI offenses. Section 5 dealt with suspended or revoked licenses and Section 6 amended the existing implied consent scheme, Section 8 would change the DUI sentencing statute and was considered the

heart of the bill as it defined the sentencing as a felony on the fourth offense, it dealt with how gaps in convictions are added up in the state for sentencing purposes and dealt with deferred sentencing. Section 9 made the same three changes in the blood alcohol content to mirror the DUI statute as in Section 8.

SB 333 dealt with the treatment aspect of DUI offenders and would make it discretionary with the judge for first-time offenders. It would require certified chemical dependency counselors to use a recognized set of standards in evaluation of DUI offenders. It would also change the handling of multiple offenders. The court would have the discretion in choosing the recommendation for a counselor.

Jill Campbell provided written testimony in support of the bills.
EXHIBIT 2

{Tape: 1; Side: B; Approximate Counter: 5.1.}

Colonel Craig Reap, Montana Highway Patrol, stood in support of the bills. He discussed the frustrations faced by law enforcement officers in dealing with drunk drivers and how he believed these proposed statutes would alleviate some of the problems.

Mike Rupert, Boyd Andrew Chemical Dependency Care Center, supported all three bills, but specifically addressed SB 333.

Norma Jean Boles, Department of Corrections and Human Services (DCHS), appeared in support of HB 333 which would encourage treatment. She said that 40% of the population of first time offenders is chemically dependent and in need of treatment. Currently they are not required to have treatment and this bill would require it, therefore they were in favor of it.

Nancy Jovin, Ravalli County DUI Task Force Coordinator, presented written testimony in support of the bills. She shared her testimony as a victim of a DUI accident where her husband was killed on their wedding day and she was injured. **EXHIBIT 3**

{Tape: 1; Side: B; Approx. Counter: 17.1}

George Bonini, Montana Traffic Education Association, expressed support for the passage of the three bills.

Peggy Wheeler gave testimony of her experience with a DUI offender in the loss of her daughter. **EXHIBIT 4**

Mark Cady, Billings Police Officer, spoke on behalf of his experience as a police officer as well as having been a multiple victim of the DUI offense. He said this package of bills was important in positively affecting Montana.

Mike Bloom, Assistant Helena Police Chief supported the bills.
EXHIBIT 5

Opponents' Testimony:

None

Informational Testimony:

EXHIBIT 6 is a letter in support of SB's 316 and 333.

EXHIBIT 7 is amendments submitted to DUI-related HB 256 which was presented for the committee's consideration.

Questions From Committee Members and Responses:

{Tape: 1; Side: B; Approx. Counter: 24.5.}

REP. DUANE GRIMES asked the sponsor if he would be supportive of changing the bill to coordinate it with other legislation. This would give it the most strength by striking subsection 4 which made it a fourth offense felony and which would automatically make it a third offense felony if the other bill which addressed this issue passed. The sponsor agreed.

REP. DEB KOTTEL asked if money which funds chemical dependency treatment programs comes out of taxes on the sale of liquor.

SEN. BISHOP did not believe that was the case, but that each treatment center in each county is paid for by the offenders.

Albert Goke, Montana Traffic Safety, said there are numerous ways the costs of treatment are paid. There is a tax on liquor which supports treatment centers for those who are unable to pay. The system which seems to work includes the offender paying for the costs of their alcohol information course as a first offender.

REP. KOTTEL asked what happens when the offender cannot afford to pay.

Mr. Goke was unaware of an instance where someone lacking the ability to pay did not receive treatment.

Mr. Rupert said they attempt to collect payment for court school regardless, but charges for treatment are based on the ability to pay. If someone is unable to pay for any part of it, they still receive treatment.

REP. KOTTEL said section 3 of SB 316 seemed to be an alienation of the sale of property whether or not it was transferred to a bona fide purchaser. She was concerned about the legitimate need to sell the car in order to support the family of the convicted DUI offender, for treatment of the offender or for transferring ownership to that lending institution or to a buyer who would

assume payments. She felt it was written so broadly as to prohibit legitimate transfers in an attempt to stop fraudulent transfers.

Mr. Funk said she was reading the bill accurately and that it was drafted in this manner primarily in order to make the harshest type of statement which could be made in regard to those types of transfers. He said it would not be a significant task to build in some exceptions for bona fide purchasers.

REP. DANIEL MC GEE asked if treatment should be characterized as a cure.

Mr. Rupert said that people who succeed are not cured. They believe the best they can do is arrest the problem.

REP. MC GEE asked how that would translate into treatment at a potential cost to taxpayers in that if a person did not want treatment, they would not recover.

Mr. Rupert said that was not necessarily the case. In a study comparing those who enter treatment voluntarily versus those who are forced into treatment, it was shown that the recovery rate in the two groups was identical. The treatment can work on people who initially do not believe they have a problem, but to succeed they must believe they have a problem by the end of it.

REP. MC GEE and Mr. Rupert discussed the length and content of the programs available. And the question was what the state's role should be in treatment for stopping DUI repeat offenses.

REP. MC GEE wondered if incarceration as a deterrent was a better solution but questioned having the state mandate treatment and asked if he felt that was a viable solution.

Mr. Rupert believed it was because there were two groups of people--those who were chemically dependent and those who commit the offense. The ones who are not chemically dependent benefit from jail time as a deterrent. But he said there is a percentage who can be reached by treatment so they are no longer a threat to society on the road.

REP. MC GEE quoted, "Treatment is discovery and long-term things are recovery." He asked how the state could extend the treatment concept over the long term so that they would not re-offend.

Mr. Rupert said that they could adopt a system for multiple offenders where they would be under the supervision of a treatment program and after care with a monitoring phase up to one full year. This suggestion was modeled after the amendment in EXHIBIT 7 referenced above.

REP. MC GEE asked the sponsor if he would agree to this amendment and he said he would not commit to it until he had a chance to review it.

{Tape: 1; Side: B; Approx. Counter: 43.3}

REP. GRIMES asked the chairman of the task force for information regarding the findings on deferral of sentences. He wanted to know in what cases they had found that it was a frequent occurrence that sentences are being deferred and how frequently that was happening.

Mr. Hanser said the concerns before the task force were that when sentencing was deferred on the DUI it caused the record to be lost as well as the impact of trying to enforce the law. They found it was frequent enough that the task force had to take some action.

REP. GRIMES asked if the legislature were to take the actions which were proposed in the bill and on the previous legislation which had passed, what role the open container bill would play in it and whether it was more of a social corrective measure or if it was a deterrent.

Mr. Hanser believed a person's first inclination was to follow the law and that it would be preventive from that standpoint. The open container law was a message important for youth. He felt it was a conflicting message to have a law against drinking under the age of 21 while not having an open container law. He said it was a contradiction to say people can drive while drinking while being opposed to drinking drivers.

REP. GRIMES redirected his first question.

Mr. McGrath expanded on the explanation regarding deferred sentencing. Between 1983 and 1991 a DUI sentence could not be deferred. In Lewis and Clark County they cannot be deferred currently. He said the reason is that it establishes a record. A deferred sentence in the traffic area precludes the state maintaining those records. In 1991 there was an inadvertent change made in a general sentencing bill. He did not think it would have a huge impact to pass that portion of this bill because in his county as well as most of the other counties of the state, sentences are not deferred.

There was a negative response from other witnesses in the audience and REP. GRIMES requested testimony from other witnesses on this subject.

Mr. Schultz said he had reviewed the court system in his area (Choteau County) for 1993 and 1994 and discovered that out of 67 cases, 87% were deferred or pled-off.

REP. DEBBIE SHEA spoke to SB 333 as a very positive piece of legislation and asked what specific exposure to rehabilitation was given to a repeat offender who was discussed in testimony.

Mr. McGrath shared which rehabilitation programs were included in that particular person's case. He added that the most significant problem which law enforcement faces is the repeat offender. Many do recognize their need for treatment and accept it, but there are some who continue to drink and drive despite all efforts to the contrary including rehabilitation programs and punishment. His experience has been that without the persuasion toward treatment, they will continue to drink.

REP. SHEA asked if there is a stipulation that they must successfully complete the program.

Mr. McGrath said it depended on the court. Some require successful completion of a chemical dependence evaluation and they are ordered to follow the recommendation, and if found chemically dependent, to go into a successful completion of a treatment program. The problem is in the definition of success as well as the time frame for success.

REP. JOAN HURDLE asked if there were statistics on how well treatment works.

Mr. Rupert said they had statistics on those who had done all that was asked of them, which they call successful completion of treatment, and statewide the average was about 60%.

REP. KOTTEL asked if there would ever be justice across counties when some law enforcement personnel who themselves are chemically dependent and when judges and lawyers are themselves chemically dependent and this affects how they sentence others. She asked what the task force did in the way of bringing some light on those issues as well as uniformity in sentencing.

Mr. Rupert replied that there are loopholes exploited by judges and law enforcement officers, but they could try to close those loopholes. The portion in SB 333 which dealt with everyone using the same standards and rules was in response to that. Treatment is more than the service they provide and whether or not treatment works is dependent upon whether the courts are willing to enforce a penalty if it doesn't and it also depends somewhat on employers in some instances as well as families.

REP. MC GEE said that in Yellowstone County certain justices of the peace sentence people to AA and that the people in AA struggle with that since they are not a governmental agency. He asked if that kind of practice would expand.

Mr. Rupert said that it was a problem for people being sentenced to those types of programs. In sentencing to AA and other private programs there was a problem with monitoring compliance to the sentencing.

REP. MC GEE asked Mr. Funk to respond to the information about people being sentenced to AA.

Mr. Funk said he was not aware of that practice.

REP. MC GEE asked if he saw that SB 333 would expand the potential practice of sentencing persons to AA.

Mr. Funk did not think SB 333 would. In the criminal procedure code which has generic statutes dealing with sentencing and a judge's general policy concerning sentencing, there is language which would allow a judge the freedom to impose sentencing to related programs. He said there was nothing in SB 333 as drafted or as contemplated that was intended to have any interaction with an AA-type program.

{Tape: 2; Side: A}

Mr. McGrath expanded on the answer by saying that the district court has broader sentencing authority than a justice or city court. The provision in the bill that would allow for a fourth offense to be treated as a felony was designed to give a judge broader authority in terms of sentencing and also broader authority in terms of monitoring.

REP. MC GEE stated that AA is an all-volunteer program and asked how the court would have the discretion to sentence someone to a nongovernmental entity.

Mr. McGrath said the sentence does not apply to the AA program, but it applies to the defendant and if the court determines that it is appropriate for the particular defendant to be required to attend AA, AA has open doors and welcomes all comers.

REP. HURDLE asked for an explanation of a .02 blood level.

Mr. McGrath said that provision stated that it is a zero-tolerance provision for minors.

REP. HURDLE requested information about the 60% success rate.

Mr. Rupert said that people are included who had done everything they had been asked to do and there is a six-month follow up and then follow up in one-year and two-year increments. He said that the follow ups are done over the telephone and therefore are not done as well as they could be. It depends upon people telling the truth. The organization he represents plans to hire an outside organization to do their follow ups which would include methods of verification of success. He said they believe that about one half of the people who get into treatment will make it.

REP. KOTTEL asked if .02 could be registered with alcohol-based mouth wash or cough medicine.

Mr. Rupert said he did not know the answer to that.

Mr. Goke answered that there were five states in the nation with what is called zero-tolerance with their laws written at zero. He said that all five states were not having problems with the testing at zero. Most of the youth being tested are never near zero. The valid concern is that mouth wash and some other items can test when they are dealing at zero-tolerance level and the task force chose .02 because they have confidence that the machine they currently have would be accurate enough to measure true consumption.

REP. KOTTEL asked if there was any consideration in the Senate to take her trial de novo bill off the table because of how it would relate to the anticipated increase in DUI sentencing.

SEN. BISHOP said he could only respond for himself and that it would not change his vote.

{Tape: 2; Side: A; Approx. Counter: 10.2}

Closing by Sponsor:

SEN. BISHOP believed this was a big first step for the state in developing an approach to life and death situations. He particularly pointed to the open container bill as being important in sending a positive message to the people of Montana.

EXECUTIVE ACTION ON SB 229

Motion: REP. LOREN SOFT MOVED SB 229 BE CONCURRED IN.

Motion/Vote: REP. KOTTEL MOVED TO AMEND SB 229 BY STRIKING "KNOWINGLY" ON PAGE 1, LINE 13 AND TO INSERT "WHEN THE PERSON KNOWS" FOLLOWING "KNOWS" AND FOLLOWING "THAT" TO INSERT "IT" ON LINE 14. The motion carried unanimously.

Motion/Vote: REP. SHIELL ANDERSON MOVED SB 229 BE CONCURRED IN AS AMENDED.

Discussion: REP. HURDLE requested an explanation of page 2, lines 14 through 16 in response to her concern that a spouse would be forced to sell their property if the portion of it which belonged to the offender was subject to seizure.

CHAIRMAN CLARK said this bill dealt with seizure of property upon conviction. REP. KOTTEL discussed ways the concern could be addressed.

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 3/14/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓ 10:20	✓	
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

Statement to the Judicial Committee, 1995 Legislature

Thank you Mr. Chairman and committee members for allowing me time to address this committee on a very important issue that effects all of our lives in one way or another. I'm going to be blunt right at the start because I feel there is no other way to express my point. Notice the front of my T-Shirt and this blank ghosted out spot. This is where my son used to be in our family picture. He graduated from Fort Benton High School on May 22 1994 he was to enter the United States Army on July 6 1994. Our son was very involved in school including Student Council, Band, Chorus, B club, Key Club, Basketball, Track, Football and loved the outdoors especially fly fishing in Montana. He was a true lover of Montana, and what it had to offer. He was to be the fifth Generation Farmer of our family farm and destined to be a citizen of Montana. But a man on June 30th 1994 made a choice and I want to emphasize the word CHOICE to get into a vehicle while legally drunk and proceed down the highway with No Drivers License, No insurance, expired plates on the vehicle with impaired vision to the point that he lost his job and crossed the yellow line to slam directly into the side of my sons pickup causing it to spin with such force that it broke his neck and caused enough head injuries to kill him. Now my wife and I and my sole remaining child, my daughter Lacey stand here and say is the Law strong enough?? Is the judicial system serving the public and enforcing the laws that we have at this time to ensure yours and my safety when we travel our highways?

The man who murdered my son died two days later from burns sustained basically because he was to drunk to get himself to safety. This mans past driving and criminal history starts at age 18 and progresses over 18 more years. I would like to tell you at this time a brief run down of his record. This is as much as we can piece together from our findings. Now I hope you realize that these people who are habitual offenders are in my opinion coddled as we found out when trying to attain records of this person who killed my son. In Canada he compiled a record over a 18 year period of 30 computer pages long, was arrested on approximately 30 different occasions for high speed driving and DUI offenses sometimes was in high speed chase situations and most of the cases had drug and drug paraphernalia implications. He served time in Canada for a crime in 1991 and 1992. Now I do not have specifics on any of these cases as I as the common citizen do not have the right to viewing them other than the five year driving history in the U.S.. He had approximately 100 alias names as we can ascertain. As if that was not enough for Canada to lock him up he also compiled a 18 year history in the United States. From going through our local Justice of the Peace files we found only one file which was a theft, DUI charge, but his 5 year history shows another theft in our county for which there is no file. After talking to

other people in different communities and other states we also found 1 dangerous Drug charge, at least two probation violations, five theft charges, two false report charges, three criminal contempt charges, and two contempt of court charges. All that said do you think this man deserved to be out in society at any capacity? Well he was and he took my son's life one month later from his last arrest in Havre on May 29th for Contempt of Court. There's plenty more offenders out on our roads to take you or one of your family members lives at any time if we continue to treat DUI's and habitual offenders with such ease and candor. So take a look at your last family picture album and choose which one you want to eliminate from your own life so as to rid these people of driving our highways. Believe me it can happen just as the front of my t-shirt depicts. That's reality!! It's a reality my family faces every morning, and will continue to face for the rest of our lives.

In Loving Memory Of: Aaron Michael Schultz

Tuesday April 22, 1975 - Thursday, June 30, 1994

FOOTPRINTS

One night a man had a dream. He dreamed he was walking along the beach with the Lord. Across the sky flashed scenes from his life. For each scene, he noticed two sets of footprints in the sand, one belonging to him, and the other to the Lord.

When the last scene of his life flashed before him, he looked back at the footprints in the sand. He noticed that many times along the path of his life there was only one set of footprints. He also noticed that it happened at the very lowest and saddest times in his life.

"This really bothered him, and he questioned the Lord about it. 'Lord, you said that once I decided to follow you, you'd walk with me all the way; but I have noticed that during the most troubled times in my life, there is only one set of footprints. I don't understand why you would leave me when I needed you the most.'"

The Lord replied, "My precious child, I love you and I would never leave you. During your times of trial and suffering, when you see only one set of footprints, it was then that I carried you."



Aaron was everyone's "little buddy." No matter what he was up to, he always had that sparkle in his eye. Aaron has touched each one of our lives and will always be a part of us. Just remember...

Aaron, we love you.



Do not stand at my grave and weep.
I am not there, I do not sleep.
Do not stand by my grave and mourn.
I am not there, I have been born.
I am a thousand winds that blow.
I am the diamond glint on snow.
I am the sunlight on ripened grain.
I am the gentle autumn rain.
When you wake in the morning hush,
I am the swift uplifting rush,
Of quiet birds in circling flight;
I am the soft star light at night.
Do not stand at my grave and weep.
I am not there, I do not sleep.
-An Anonymous Indian Prayer



Part two

with that statistical scenario in mind I would bring your attention to some clippings I have been keeping just in the last six months out of our local newspaper and some magazines that show the same problems nation wide. On this poster is a small portion of the DUI problem as perceived by a handful of writers and citizens expressing their anger and frustrations to the Judiciary System as it stands. I'm not going to go in to all of them, I'm sure your aware of the public outcry for Justice. I am constantly bombarded by angered people who are fed up with the status Quo of the Judiciary System. To emphasize my point I have here in this box letters of support we have compiled from angry voters through out the state the letter reads as follows: (read letter). We had no trouble getting people to sign these letters and in our own Chouteau County we have collected 250 letters of support at this time with more coming in, state wide we have 655 letters from five counties. And this was done by a handful of people. I know we reached only a sampling of Montana citizens with the same concerns. We have letters from students not yet voters but future voters with the same concerns. The Law Enforcement people are doing a very commendable job and we have their letters of support in this box also. I hope some of you have been out with or talked to some of these Law enforcement officers to see what they deal with on a every day basis with these habitual offenders and ask yourself how you would feel to see these people get off with a Deferred sentence or a plea bargain? A perfect story told to me by a Law Enforcement Officer just a couple months ago illustrates my point. He stopped two individuals one night heading toward Great Falls in Chouteau County he ran a check on them and found out they were both felons with prior felony charges, one of them had served ten years for manslaughter, in the car was drugs on the seat and a envelope of money, he arrested them and took them in to the County Attorney who gave them a plea bargain which lowered all charges to a misdemeanor and let them pay their fines out of the money that they had in the car on the seat. As the disgusted officer was leaving the Attorneys Office one of the men said: You were lucky, we were waiting for you to make a mistake and we were going to take you out.. Now put yourself in that scenario and tell me how would you keep your moral up and how frustrated would you get about your job? pause This is one incident but the ramifications of what could of happened is plain disgusting. What we are here to ask all of you is Where is the justice?? When killing an elk out of season has a stiffer penalty than taking a car which is no different than a loaded gun and pointing it at a innocent person and taking their life. We have as a society who through negligent laws has totally turned priorities backward of what they should be. Montana is noticeably behind the rest of the nation on how it handles DUI

Drug and Criminal offenses. These people who signed our letters are telling you something and you better react. The last election in this state and this nation wasn't about Democrats or Republicans it was about being fed up with government in general and how it is not listening to the people and if you don't get in touch with what they are saying to you next election will be another learning experience for you that you may not like. Believe me when I tell you that a large percentage of the people in this state and Country are saying enough is enough. I strongly urge you to support any and all legislation that will help to stop the atrocities that are being allowed at this time in our state. Please help us and I mean us as letter signers and citizens of Montana to stop this feel good system and install some fear in people who chose to disobey the law and hopefully from your actions maybe some family out there on the roads or on the streets won't have to experience what our family has gone through do to the neglect of the system. As my wife Lorri says My son did in one moment what two countries failed to do in 18 years, and that's to take one habitual offending drunk off the roads of Montana. Not by choice he laid his life down to make safer roads for Montanans. So I stand here today to try to get people to face a reality I face every day not by choice but by the choice of a drunk driver who over and over again laughed at our Judicial System and used it to his advantage. Is it not time to stand up and be accountable as Representatives of your constituents and of the State of Montana and make the system work again for the people whom you owe allegiance to by their vote of confidence in you? Please do your duty and support efforts to correct these laws for the safety of all our loved ones. Don't let another family go through what we have gone through, no one should have to face what we face every day. By making it a felony to drive and drink it will go along ways toward putting fear back into these habitual offenders of DUI laws. In the future I would hope the Judicial system also would close the loop holes in the law that makes Deferred Imposition of sentence and Plea Bargaining the mainstay of our court systems today. Common sense dictates that if you disobey a law you should have to pay the consequences. I believe that if some fear is established in the law that we can save some people from living the life my family is now living. And please don't put a dollar value on human life by trying to ascertain a way out by saying there's not enough prison space. When you get some fear into the people towards the law we will save money and above all we will save families and communities a lot of grief. That's why my family and I and all these friends of ours are here, we want to make a difference for all Montanans. Thank You for your time and consideration.

EXHIBIT 2
DATE 3/14/85
SB 316, 333, 237

My name is Jill Campbell. I am here to give my support to House Bills 237-316-333. I feel if our drunk driving laws were different, I would not have to be here right now.

Because of a drunk driver my hole family lives have been turned upside down. Last Aug. on her way home from a rodeo in Kalispell my 16 year old daughter and her good friend Anita were killed by a drunk driver. Dr. Miller passed on a double double yellow line and hit our truck head on. Anita was killed instantly, Jana was unconscious and life flighted back into Kalispell. Unless you are a parent and received one of those midnight phone calls, you will never know the fear that grips your heart. I keep thinking, this is not happening to us. We are supposed to leave on vacation in the morning. Instead we are heading to the hospital in Kalispell. I can still see all those flashing lights ahead. I do not want to drive by the accident scene, but we had too. I did not look but I can still hear my 14 year old son saying NO WAY. When we got to the hospital and the doctor finally came in to tell us what was happening, he said she was still unconscious. The CAT scan showed on internal injuries, no broken bones but... she had sustained major head trauma. She was bleeding inside her brain and there is nothing you can do for that except pray it will stop and the swelling will go down. He told us we could go in and see her in a minute. It took all my strength just to walk in that emergency room.

I can not begin to tell you how hard it was to see her hooked up to all those machines. I just wanted to take her into my arms, but I could not. I did manage to tell her how much I loved her and that she was strong and could fight this. The next 2 days were a living hell. My hole family was there to give there love and support. We all took turns sitting by her side, talking to her and praying for her. I would sit there and hope she could here me tell her how much I loved her and needed her to wake up. Even after the doctor came in and told us it would take a miracle to pull her through, I still would not gibe up hope. It all seemed like a bad dream and I just wanted to wake up. Then the hospital Chaplain came in and told me I needed to let her go. That I had to tell her it was ok. If she was to go in peace she needed to here me tell her that I would be ok with out her. I told him I could not say that. I was not ready to give up. They say miracles happen every day. I wanted one. Finally I did tell her, but I added that if it was not her time she did not have to go. We still had concerts and rodeos to go too. she died the next afternoon.

I made a promise to myself that I would try to get our drunk driving laws changed. The DUI Task Force has made a good start.

On House Bill 333, I believe treatment in the early stages can be a very important part in controlling this crime. In DR. MILLERS case he realized treatment was important only after killing 2 innocent people.

I think not giving a person a probationary license, until they
good idea. We make it to

easy for a person to drive again so soon after there ticket. They just broke the law and do not deserve to drive again so soon. We need to make it a lot harder on drunk drivers. Let them have to walk to work or ride a bike for a while, maybe they will think twice before they drink and drive again.

House Bill 316. In 1984, if officers were to have used a hand held testing device, Dr. Miller might not have gotten his DUI reduced to a reckless driving ticket. Plus in 1988 and 1991 his careless driving tickets could have been DUI'S. Even the Judge said so last week when he was finally sentenced. If he would have been previously tested he might not have been driving drunk that night on our roads. We need to remember that passage of this bill will not mean a financial burden for the people of Montana. The device can be used at the discretion of each Police Department. My husband and I have already found funding for 3 of these devices if the bill is passed. I think you would be amazed at how many civic organizations would support a idea like this. Not to mention the State DUI Task Force or local Task Forces.

Making the third or forth DUI a felony is long over due. Every week in Lake County alone paper you read time after time about repeat offenders. The use of a hand held testing device could have convicted Dr. Miller and made him have 3 DUI'S. Then my daughter and her friends death would have been a felony and he would not be getting out of prison in as little a 15 months.

House Bill 237 that deals with open container. In Dr. Millers own words, he bought a 6 pack of beer and took off for Hamilton. Takeing the back roads to stay away from traffic. The 6 pack he drank while driving was not enough, he had to stop for drinks is Charlo then in Pablo. They found open containers in his truck after the crash. If people can drink legally going down our highways who is there to tell them when they have had enough. How is a police officer going to judge who has had a little to drink and who has had alot. Are there any of us that can not wait until our dentation to have that drink.

In my mind there is nothing you can do today to make things too hard on drunk drivers. For to long we have dealt with this as a social problem. When actually it is a criminal act. Give the Police Officers the tools to do there job.

in sample

Hi my name is Peggy Wheeler

I lost my only daughter to

a drunk driver on Aug 19, 1994

The driver of the truck that

hit my daughter and her

friend Jane wanted to

know ^{why} our children were

in the wrong side of the

road. He was the one on

the wrong side. * This man

had 4 Beckers & careless

driving tickets before this.

* He was an emergency room

physician at a local hospital.

that worked on DUI victims

everyday so he knew what

drinking & driving would do

to a person. My daughter

died instantly but her

friend lived 2 more days
after. On that day I not
only lost my only child I
lost any future for my
part of family the family
tree. I don't get to see
her go to college or get
married. To share her
getting pregnant and having
my first or any grandchildren.
Her father past away in
1982. So this driver also
wiped out the only thing
precious I had left of
that man and marriage.
It only exists in pictures
and memories.

For the last 6 months I
have picked up area papers

EXHIBIT 4
DATE 3/14/95
SB 237, 316, 333

and seen either a picture
of my daughter or the
doctor. That is really
tough on holidays when
you going through the
motions but really don't
have any heart for any
of it.

I my self and a recovering
alcoholic for almost 6 years
I thank god everyday for
that sobriety. And because
of my acholism my daughter
had made the choose she
didn't need to drink. I was
very proud of that decision.
Please pass these laws so
other people don't have to
go through this.

EXHIBIT 5
DATE 3/14/95
SB 237, 316, 333

HOUSE OF REPRESENTATIVES

SB 237, SB 316, SB 333 - COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME MICHAEL K. Bloom BUDGET _____
ADDRESS 221 BRECKENRIDGE DATE 3/14/95
WHOM DO YOU REPRESENT? Montana Assn. of Chiefs of Police
SUPPORT X OPPOSE _____ AMEND _____
COMMENTS: IT'S THE RIGHT THING TO DO.

2-19-95

EXHIBIT 4
DATE 3/14/95
SB 316,333

Ladies and Gentlemen of The
House Judiciary Committee

I would like to address the
issue of DWI laws, that has recently
gotten attention of the media.

Before we jump further into issues
which in some cases becomes persecution
let's again consider that in a majority
of instances we are dealing with the truly too
common illness of alcoholism. This disease
is recognized by the medical community
nationwide as a treatable disease, yet we
continue to punish and increase punishment
before we ~~increase~~ increase the utilization
of the presently available dependency treatment
structures.

Before leaping toward making a
felony out of a given offense, how about
mandatory treatment at violator's expense.
Why not alternatives sentencing, which is
also currently possible but not utilized to its
potential? For in-patient, out-patient treatment
- why take productive, tax paying people
out of the work force and into jail, at the
expense of the remaining taxpayers?

Why not more availability of respite
care with at home treatment still

~~Remember~~

Remember, we're still a rural state
placed on "restriction" and most of us have a
vaccination for this, or any other
"disease", has not, cannot and never will
be an acceptable alternative to proper
treatment. Too often, the symptoms of the
ailment are being quashed while the
disease continues unchecked.

I speak of this out of my own
experience and observation of many, many
others. Please, listen to the voice of those
of us who see this problem from the inside.

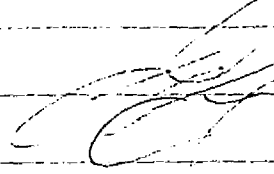
I will continue to be available for
any discussion of this, or any other
matter, at any time.

Thank you all for your time and
consideration.

Sincerely,
George Gallagher
6718 Roberts Rd
Charlo, MT 59824

Secretary -

Please see that each
Committee member receives a copy
of this letter. Thank you

A handwritten signature in cursive script, appearing to be "J. J. [unclear]".

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY

COMMITTEE

DATE 3/14/95

BILL NO. SB 333 SPONSOR(S) Sen Bishop

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
<u>Alber & Goke</u>	<u>High Traffic Safety</u>	X	
<u>MIKE, LORE, LARRY SCHULTZ</u>	<u>Chautau County</u>	X	
<u>RR1 BOX 6, Laramie MT 59466</u>	<u>JEFFERSON CO.</u>	X	
<u>ELLYCIA THAPKEN</u>	<u>DUI TASK FORCE</u>	X	
<u>JEFFERSON CITY 59638</u>			
<u>Box 1293 Ft Benton</u>	<u>Chautau Co. Citizens</u>	X	
<u>Nancy Hanford 59442</u>			
<u>Box 566</u>	<u>Chautau Co</u>	X	
<u>Dan Henke Ft. Benton</u>			
<u>Craig Reap</u>	<u>MHP</u>	X	
<u>Harold Hanson</u>	<u>state Out-look force</u>	X	
<u>Mike Byrnes</u>	<u>Brid Andrew CDC</u>	X	
<u>Jim Huddell</u>	<u>City of Helena</u>	—	
<u>George Boring</u>	<u>MTFA</u>	X	
<u>David Boring</u>	<u>DCHS / ADAID</u>	V	
<u>Nancy K. Join</u>	<u>DUI Task Force Ravalli Co</u>	X	
<u>Loren Conner</u>	<u>DUI Task Force Tolson</u>	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993 Kathy Mc Gowan
wp:visbcom.man
CS-14

MSPOA

X

said that when the person got in the car while [or after] drinking, the mistake was still made.

REP. BOHARSKI rebutted that argument.

CHAIRMAN CLARK responded that the first decision was wrong and that this was nothing new. [The criteria of] being in actual physical control of a motor vehicle had been in effect for a long time and some of the people because of their lack of good judgment, do not get clear off the road and some stop right in the middle of the traffic lane and others have been found to be facing the wrong way in the opposite lane and those were not seen driving. The purpose of the statute was that they would still be intoxicated and still in control of the motor vehicle for all legal purposes and he did not believe that they should weaken that. He said that was the reason they had juries and if the person was clear off the road on an approach and charged with a DUI, then it should be taken to a jury.

REP. ANDERSON said that a compelling criteria was that even in the driveway, if the key is in the ignition, the driver is still in control of the vehicle.

Vote: The motion on the bill carried unanimously by voice vote.

Discussion: REP. MC GEE asked if a coordinating instruction was needed on this bill.

Ms. Nordlund explained the conflict between section 8 of the bill which amended 61-8-714, MCA, and the same section in HB 256. She said there was coordination language if HB 256 passed with an amendment to 61-8-712, MCA, and the amendment contained a third-offense felony provision, that amendment would supersede the language in SB 316.

EXECUTIVE ACTION ON SB 333

Motion: REP. WYATT MOVED SB 333 BE CONCURRED IN.

Motion: REP. MC GEE MOVED TO AMEND SB 333. EXHIBIT 5

Discussion: REP. MC GEE explained the reasons behind the amendments being that he did not think a 30-day treatment was inadequate. The language of the amendment granted a provision for one year of follow-up. It also would provide that the treatment program required would not necessarily be an AA program. He said that amendment 5 took the penalty standards for the per se statute to correspond with what had already been done with the DUI penalty standards.

Ms. Nordlund, without objection from the committee, said she wanted to be very clear that this set of amendments made sure that the treatment provisions contained in the bill applied to

both the DUI offender and the BAC offender. The coordinating language in HB 256 was language which would make more parallel the penalties for DUI and BAC. In the actions in taking it to a third offense felony in HB 256, the BAC was not dealt with. She explained it further and said this only dealt with treatment.

REP. ANDERSON asked if the sponsor of the amendment would consider it a friendly amendment to amendment 4 to change "shall" to "may" so that the counselor would have the ability to keep the person for the year if needed, but would allow discretion to release them prior to that if they were found to not be chemically dependent.

REP. HURDLE was concerned about amendment 4 providing that a court couldn't assign people to AA because of the cost of other types of treatment. She felt that there would be cases where the best option was assignment to AA and did not want to see it prohibited.

REP. MC GEE preferred that everyone who had to go to treatment would follow-up with AA. But he was suggesting that people were getting sentenced to AA who did not want to go there and then were disruptive and broke anonymity of the group. A basic tenant of AA is that they wanted to be there. He did not believe it was within the purview of the state's authority to sentence them to a private "thing."

REP. SOFT asked where in the bill the court was ordering people to AA.

REP. HURDLE said she would eliminate the last sentence of amendment 4.

REP. MC GEE argued that it would not have to be AA and cited other organizations which offered aftercare treatment. He imagined that a treatment facility would institute aftercare treatment programs to comply with the statute. He did want to limit where the court could send people because his concern was with the people who were in AA.

REP. ANDERSON asked if it was his intention that a first-time offender have an automatic one-year counseling period or if it applied to those persons found to be chemically dependent. He said that if the intention was to eliminate AA from the judges' options, he would speak against the amendments.

{Tape: 3; Side: B; Approx. Counter: 49}

REP. BOHARSKI asked how effective the sponsor felt the one-year follow-up was. He did not see how in the original language, the judges couldn't require a one-year follow-up as a part of the sentence.

REP. MC GEE said he was relating to cases he was aware of in his area. He said he knew that people were being sentenced to AA without any consideration to the people who were going to AA because they wanted to be there. He said that he knew that AA groups had broken up or closed their doors because of this. He said that a number of people then had to yield because of one person who might not think he was an alcoholic and didn't want anything to do with AA. The original intent of the amendments was to lengthen the time frame of aftercare and to not use AA as a mandatory element for recovery though it may be utilized.

REP. BOHARSKI said that he thought it was a local problem and did not know of other parts of the state where it was a problem. He felt the aftercare of one year could be ordered as part of the original sentence for treatment and he was not sure this would solve the local problem.

REP. SOFT re-read the bill on page 4, lines 6 - 14. He thought that section covered amendment 4 and recommended that they delete amendment 4.

REP. GRIMES supported the concept behind the amendments but felt there was a technical problem with amendment 4 though conceptually it might be right. He asked for someone from the department to address that.

Mike Rupert, Boyd Andrew, without objection from the committee, said the amendment was his idea and the intent was for multiple offenders and not first offenders. He did not know how they arrived at the final language.

REP. GRIMES said he understood that it was in line with what they did on the other bill and he explained that further.

Mr. Rupert said the intent was to answer how they could make it more likely for the multiple offenders to get sober.

REP. GRIMES asked for a suggestion to adapt it so that it would apply to multiple offenders.

Ms. Nordlund, without objection from the committee, said they would insert "second and subsequent offenders," before "The treatment program shall include....."

REP. HURDLE continued to object to the second sentence of the amendment. She felt it was a local problem and did not belong in the amendment.

REP. KOTTEL supported the amendment and thought AA needed to be voluntary and should not be considered a treatment program. She felt it was a support program.

Mr. MacMaster said that every session deeply considered DUI bills and in every one of the sessions the department of corrections

personnel, whether right or not, had expressed a real concern about judges sending people to treatment programs which the department had not taken a look at and approved.

REP. MC GEE asked if the language was sufficient to give the approved program in the called for qualifier.

REP. ANDERSON had some reservations about telling people how to handle it in their different communities, but he would vote for the amendment if the word, "shall," were changed to "may."

REP. MOLNAR asked how effective treatment would be to sentence an offender to it rather than leaving it as a voluntary decision.

REP. MC GEE said it could work because treatment is intense. The point was to stretch out the treatment to extend the time for the person to reach the point where they accepted the treatment and received a good result.

REP. WYATT supported the amendment. In her community, AA also complained about those who were sentenced to AA meetings.

REP. GRIMES called for the question on the amendment including the language which was recommended by Ms. Nordlund.

REP. MC GEE considered that to be a friendly amendment and a substitute amendment was not necessary.

Vote: The motion carried 16 - 1, REP. HURDLE voted no.

{Tape: 4; Side: A}

Motion/Vote: REP. MC GEE MOVED SB 333 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

EXECUTIVE ACTION ON SB 143

Motion: REP. BOHARSKI MOVED SB 143 BE CONCURRED IN AS AMENDED.

Discussion: CHAIRMAN CLARK reminded the committee that SB 143 had previously failed because of a tie vote.

REP. BOHARSKI discussed the amendments which removed all the Senate amendments with the exception of number 3 on page 2 and reinserted all of the original language in the bill which took it back to an optional provision.

REP. CURTISS supported the motion and felt it was important to get the bill out of the committee which would go along with several other mandate efforts supported by the Governor's office.



HOUSE STANDING COMMITTEE REPORT

March 23, 1995

Page 1 of 3

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 333 (third reading copy -- blue) be concurred in as amended.

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. Hurdle

And, that such amendments read:

1. Title, lines 7 and 9.

Following: "INFLUENCE"

Insert: "OR WITH EXCESSIVE ALCOHOL CONCENTRATION"

2. Title, line 11.

Following: "SERVICES;"

Insert: "REQUIRING AT LEAST 1 YEAR OF TREATMENT FOLLOWUP AFTER A SECOND OR SUBSEQUENT CONVICTION;"

3. Title, line 12

Strike: "SECTION"

Insert: "SECTIONS"

Following: "~~61-11-101~~"

Insert: "AND 61-8-722"

4. Page 4, line 10.

Following: "counselors."

Insert: "On a second or subsequent conviction, the treatment program must include followup procedures determined necessary by the counselor for a period of at least 1 year from the date of admission to the program. A court may not order a defendant to attend or participate in a self-help program not specifically recommended by the approved program providing services to the defendant under this subsection."

Committee Vote:

Yes 18, No 0.

671129SC.Hbk

5. Page 6, line 4.

Insert: "Section 2. Section 61-8-722, MCA, is amended to read:

"61-8-722. Penalty for driving with excessive alcohol concentration. (1) Except as provided in subsection (7), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than \$100 or more than \$500.

(2) Except as provided in subsection (7), on a second conviction of a violation of 61-8-406, ~~he~~ a person shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and by a fine of not less than \$300 or more than \$500.

(3) (a) Except as provided in subsection (7), on a third or subsequent conviction of a violation of 61-8-406, ~~he~~ a person shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months and by a fine of not less than \$500 or more than \$1,000.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be seized and subjected to the procedure provided under 61-8-421.

(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

(4) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and suspension of driver's licenses, apply to any conviction under 61-8-406.

(5) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which ~~may~~ must include alcohol or drug treatment, or both, ~~if considered necessary by the counselor conducting the program in accordance with the provisions of 61-8-714.~~ Each counselor providing education or treatment shall, at the commencement of

the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

(6) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section, then the prior offense must be expunged from the defendant's record.

(7) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(8) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or subsequent offense, the court may order that a term of imprisonment imposed under this section be served by imprisonment under home arrest as provided in Title 46, chapter 18, part 10."

-END-

Amendments to Senate Bill No. 333
Third Reading Copy

Requested by Representative McGee
For the House Judiciary Committee

Prepared by Brenda Nordlund, Department of Justice
March 22, 1995

1. Title, lines 7 and 9

Following: "INFLUENCE"

Insert: "OR EXCESSIVE ALCOHOL CONCENTRATION"

2. Title, line 8

Following: "TREATMENT;"

Insert: "REQUIRING ONE YEAR OF TREATMENT FOLLOWUP FOR A PERSON
CONVICTED OF DRIVING UNDER THE INFLUENCE OR EXCESSIVE ALCOHOL
CONCENTRATION;"

3. Title, line 12

Following: "AMENDING"

Strike: "SECTION"

Insert: "SECTIONS"

Following: "61-8-714"

Insert: "and 61-8-722"

4. Page 4, line 10.

Following: "counsellors."

Insert: "The treatment program shall include followup procedures
determined necessary by the counsellor for a period of at least
one year from the date of admission to the program. A court may
not order a defendant to attend or participate in any self-help
program except for one specifically recommended by the approved
program providing services to the defendant under this
subsection."

5. Page 5, line 8.

Insert: "NEW SECTION. Section 61-8-722, MCA, is amended to read:

"61-8-722. Penalty for driving with excessive alcohol
concentration. (1) Except as provided in subsection (7), a person
convicted of a violation of 61-8-406 shall be punished by
imprisonment for not more than 10 days and shall be punished by a
fine of not less than \$100 or more than \$500.

(2) Except as provided in subsection (7), on a second
conviction of a violation of 61-8-406, he shall be punished by
imprisonment for not less than 48 consecutive hours or more than
30 days and by a fine of not less than \$300 or more than \$500.

(3) (a) Except as provided in subsection (7), on a third or
subsequent conviction of a violation of 61-8-406, he shall be
punished by imprisonment for not less than 48 consecutive hours
or more than 6 months and by a fine of not less than \$500 or more
than \$1,000.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be seized and subjected to the procedure provided under 61-8-421.

(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

(4) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and suspension of driver's licenses, apply to any conviction under 61-8-406.

(5) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which ~~may~~ must include alcohol or drug treatment, or both, ~~if considered necessary by the counselor conducting the program, in accordance with the provisions of 61-8-714.~~ Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

(6) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section, then the prior offense must be expunged from the defendant's record.

(7) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility.

- The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(8) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or subsequent offense, the court may order that a term of imprisonment imposed under this section be served by imprisonment under home arrest as provided in Title 46, chapter 18, part 10."

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

CONFERENCE COMMITTEE ON SENATE BILL 333

Call to Order: By CHAIRMAN AL BISHOP, on April 11, 1995, at 1:00 P.M.

ROLL CALL

Members Present:

Sen. Al Bishop (R)
Sen. Reiny Jabs (R)
Sen. Fred R. Van Valkenburg (D)
Rep. Roger Somerville (R)
Rep. Daniel W. McGee (R)
Rep. Bill Carey (D)

Members Excused: None

Members Absent: None

Staff Present: John McMaster, Legislative Council
Judy J. Keintz, Committee Secretary

Discussion:

SENATOR VAN VALKENBURG advised the House Committee members that there were two reasons why the Senate rejected the House amendments. First, there was concern about the cost of a one-year treatment program. There was confusion regarding what would be included in that treatment. The second issue was concern about prohibition of judges being able to require someone to participate in a self-help program. He had visited with judges and treatment personnel. He had also visited with REPRESENTATIVE DANIEL MCGEE who had proposed that there should not be a prohibition on a sentence which would require attendance at open meetings.

Motion: SENATOR VAN VALKENBURG MOVED TO AMEND SB 333. EXHIBIT 1.

REPRESENTATIVE MCGEE explained the amendments. The second amendment is on page 4, lines 15 through 17. He referred to the sentence on page 4, line 15, which stated, "A court may not order a defendant to attend or participate in a self-help program not specifically recommended by the approved program providing services to the defendant under this subsection." He believed that sentence could be deleted. It would read, "A court or counselor may not require attendance at a self-help program other than at an "open meeting" as that term is defined by the self-

help program." He had two concerns. The first is that treatment be continued longer than just an inpatient treatment facility. Secondly, people who are legitimately attending AA meetings, should not be encumbered by people being sentenced to AA. Open meetings, which are defined by the self-help groups as allowing anyone to attend, would be a good vehicle for people to become familiar with AA. The fact that the defendant could voluntarily participate would go a long way toward their treatment. He believes everything is accomplished he wanted to see accomplished with this bill.

REPRESENTATIVE ROGER SOMERVILLE questioned whether a judge could order a defendant to attend an open meeting without coordinating with the local AA chapter?

REPRESENTATIVE MCGEE stated there are no local AA chapters. Every AA group is independent. They do not have a structure. That is one of the problems.

REPRESENTATIVE SOMERVILLE stated the problem with not having an agreement with that organization is that they may not accept the defendant who is being sent there.

SENATOR AL BISHOP stated they accept anyone who attends. During a Senate floor session, a Senator who is an AA counselor stated they would never turn anyone away.

REPRESENTATIVE MCGEE stated he had been in AA for ten years. He has seen the problem with people sentenced to AA. They are disruptive at a closed meeting. All they want is the document signed proving their attendance. AA is not an arm of government. Every open AA meeting is opened to anyone who wishes to attend. Closed meetings are for people who have recognized they have an alcohol problem and wish to do something about the problem. The language in the bill does not specifically itemize AA. It states self-help programs. The bill also limits this attendance to open meetings. However, it also provides that they may attend closed meetings.

Joe Roberts, DUI Taskforce, commented he talked to Judge Morris, Justice of the Peace in Missoula. He learned that while there is no formal structure with AA, there is a national court program where AA is coordinated with the court systems. They are comfortable with this bill.

SENATOR VAN VALKENBURG stated a judge could not require AA to take a defendant. The judge can require the defendant to attend. The judge would not have any jurisdiction over AA. If AA would not accept a defendant, the judge would not default the defendant. However, failure on the part of the defendant to attend could result in a jail sentence.

REPRESENTATIVE MCGEE stated it is important that AA have open arms. The only requirement for membership in AA is the desire to

stop drinking. If a person attends due to a court order but does not have the desire to stop drinking, they haven't met the only criteria for being there.. The open meeting avenue is the answer. Everyone at the open meeting would encourage the defendant to attend. When they reach the point where they do not wish to be drinking anymore, they will start attending the closed meetings.

Vote: The motion CARRIED UNANIMOUSLY on oral vote. .

Motion: SENATOR VAN VALKENBURG MOVED THE CONFERENCE COMMITTEE REPORT ON SB 333 BE APPROVED.

Vote: The motion CARRIED UNANIMOUSLY on oral vote.

Conference Committee

SB 333

DATE 4/11/95

[illegible]

Attach to each day's minutes

Conference Committee
on SB 333
Report No. 1, April 11, 1995

Page 1 of 1

Mr. President and Mr. Speaker:

We, your Conference Committee on SB 333, met and considered:

House Committee on Judiciary amendments to the third reading
copy, dated March 23, 1995.

We recommend that SB 333 (reference copy - salmon) be amended as
follows:

1. Page 4, lines 13 and 14.

Strike: "INCLUDE" on line 13 through "COUNSELOR" on line 14

Insert: "be followed by monthly monitoring"

2. Page 4, lines 15 through 17.

Strike: "MAY NOT" on line 15 through "SUBSECTION" on line 17

Insert: "or counselor may not require attendance at a self-help
program other than at an "open meeting" as that term is defined
by the self-help program. A defendant may voluntarily
participate in self-help programs"

And that this Conference Committee report be adopted.

For the Senate:

Bishop

Chair

Jabs

Van Valkenburg

Amd. Coord.

Sec. of Senate

For the House:

Somerville

Chair

McGee

Carey

ADOPT

REJECT

831337CC.SPV

INSTRUCTIONS:

1. Page 4, lines 13 and 14.

Strike: "INCLUDE" on line 13 through "COUNSELOR" on line 14

Insert: "be followed by monthly monitoring"

2. Page 4, lines 15 through 17.

Strike: "MAY NOT" on line 15 through "SUBSECTION" on line 17

Insert: "or counselor may not require attendance at a self-help program other than at an "open meeting" as that term is defined by the self-help program. A defendant may voluntarily participate in self-help programs"